121-186

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1335

HENRY S. BARRON, PLAINTIFF IN ERROR,

vs.

GEO. W. BURNSIDE, SHERIFF OF LINN COUNTY, IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

FILED JANUARY 31, 1887.

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Fee for Trans. $ 10 00

1 PLEAS before the Supreme court of Iowa.

Be it remembered that on the 6th day of October, 1886, there was presented to the Supreme court of Iowa a petition for a writ of *habeas corpus*, the same being in words and figures following, to wit:

STATE OF IOWA, } ss.
LINN COUNTY. }

State of Iowa)
vs.)
Henry Barron.)

PETITION FOR A WRIT OF HABEAS CORPUS.

To the Honorable the Justices of the Supreme Court of the State of Iowa:

Your petitioner, Henry Barron, respectfully states to your Honors: That he is now a prisoner in the custody of Geo. W. Burnside, sheriff of Linn county, Iowa, under physical control and restraint by said sheriff, at the city of Cedar Rapids, for a supposed criminal offense, to wit: For the violation of chapter 76 of the laws of the 21st General Assembly of the State of Iowa; a copy of which
2 said chapter 76 is hereto attached and marked Exhibit "A."

Your petitioner further states, that the information under said chapter 76 was filed against your petitioner on the fifth day of October, 1886, in the office of C. W. Barton, a justice of the peace for Linn county, Iowa, a copy of which said information is hereto attached, marked Exhibit B, and made a part of this petition.

Your petitioner avers that said justice of the peace did, pursuant to said information filed as aforesaid, before him issue a warrant for the arrest of petitioner; a copy of which said warrant is hereto attached, marked Exhibit C, and made part of this petition; that said justice of the peace placed said warrant in the hands of G. W. Burnside, sheriff of Linn county; that said sheriff, by virtue of the pretended authority of said writ, did arrest petitioner, and now holds him in corporeal restraint and imprisonment by virtue thereof.

3 Your petitioner further states, that at the time he was arrested he was one of the employés of the Chicago and North-Western Railway Company, a corporation organized under the laws of the State of Illinois, with its principal place of business at Chicago in said state, which said corporation owns and operates a railroad from the city of Chicago in said state through the State of Illinois, crossing the Mississippi river at Clinton, Iowa, and passing through the county of Linn and other counties to the western boundary of the state, and crossing the Missouri river into the State of Nebraska,

and thence through the State of Nebraska west and into the Territory of Wyoming, having its western terminus at Douglas; that on the day of said arrest and shortly prior thereto, this petitioner, who is a locomotive engineer by occupation, was aiding in moving one of the trains of said railroad company from the city of Chicago to the city of Douglas aforesaid, carrying the United States mail
4 and passengers between the points aforesaid, and intermediate points; that in the movement of said train it became necessary to run the same over the track which passes through the State of Iowa as aforesaid, and that this petitioner was engaged in aiding in the running of said train over that portion of said track running in and across the county of Linn.

Petitioner states that the Chicago and North-Western Railway Company is a corporation foreign to the State of Iowa, and has not filed copies of its articles of incorporation, nor obtained a permit as required by chapter 76, laws of the 21st General Assembly of the State of Iowa, and that petitioner knew when doing the acts charged as criminal in said information that said company had not complied with said statute nor obtained such permit.

Petitioner states that said chapter 76 is unconstitutional, inoperative and void as to the Chicago and North-Western Railway Company, because of the following facts:

5 On the 16th day of August, 1836, the Galena and Chicago Union Railroad Company was organized under a special act of the legislature of the State of Illinois as a corporate body, which act of incorporation was subsequently amended on the 4th day of March, 1837, the 24th day of February, 1847, and the 25th day of February, 1854, and was authorized by said act of the legislature of the State of Illinois to construct and operate a railroad from the city of Chicago to Fulton, Illinois, on the east bank of the Mississippi river, opposite Clinton, in the State of Iowa. That on the 7th day of June, 1859, the Chicago and North-Western Railway Company was incorporated under and in pursuance of certain acts of the legislature of the State of Illinois, and thereby became a corporate body and became the owner of certain railway lines in said state. And afterwards, on the 2d day of June, 1864, the Galena and Chicago Union Railroad Company was consolidated with the Chicago and
6 North-Western Railway Company, under the name of the Chicago and North-Western Railway Company, which has ever since continued to exist as a corporate body, and to operate railroads in the States of Illinois, Iowa, Wisconsin, Minnesota, Michigan and elsewhere.

And petitioner further says, that on the 3d day of July, 1862, the Galena and Chicago Union Railroad Company leased the Chicago, Iowa and Nebraska railroad, a line of railroad extending from Clinton, on the Mississippi river, to Cedar Rapids, Iowa, a distance of eighty-two miles, for the term of ninety-nine years; that on the

10th day of November, 1869, the Chicago and North-Western Railway Company leased the Chicago, Iowa and Nebraska railroad by a modified lease, and thereafter used and operated said railroad under said lease until the purchase thereof hereinafter mentioned. That on the 8th day of July, 1862, the Galena and Chicago Union Railroad Company leased, for the term of ninety-nine
7 years, the Cedar Rapids and Missouri River railroad, a line of railroad extending from Cedar Rapids to Council Bluffs, in the State of Iowa, a distance of about two hundred and seventy-one miles, and on the 1st day of December, 1865, the Chicago and North-Western Railway Company received a modified lease of said line of railroad, under which it held and operated said railroad until the purchase thereof hereinafter mentioned.

And petitioner further says, that between the years 1869 and 1884, the Chicago and North-Western Railway Company leased the following railroads connecting with the Chicago, Iowa and Nebraska railway, and with the Cedar Rapids and Missouri River railroad, to wit: The Maple River railroad, the Stanwood and Tipton railroad, the DesMoines and Minneapolis railroad, the Iowa Midland railroad and the Ottumwa, Cedar Falls and St. Paul railroad, all of said leased lines having an aggregate mileage of over eleven hundred miles, and under said leases the said Chicago and North-Western Railway Company, prior to 1884,
8 was in possession thereof and operating the same as a common carrier.

And petitioner further says, that the legislature of the State of Iowa passed an act, which was approved March 28, 1864, and went into effect on the 10th day of April, 1864, which provided among other things, as follows:

"SECTION 4. The board of directors of any railroad company shall have power to authorize contracts of lease or joint running arrangements with any connecting road, for the operation of such connection, upon such reasonable and just terms as may be agreed upon by the parties, and the party thus leasing or operating a railroad of another company shall in all respects be liable to the public for their acts or negligence, in the same manner as though the road belonged to them.

"SEC. 5. This act shall apply to all contracts and leases heretofore made, as well as to be made hereafter."

And that the legislature of Iowa passed another act, which was approved on the 3d day of April, 1868, and which went into
9 effect on the 8th day of the same month, by which it was enacted as follows:

"SECTION 1. All companies, *lessees* or corporations hereafter running or operating any railroad within this state shall be liable for injuring, destroying or killing any live-stock, the same as railroad companies now are, and all the provisions of chapter 169 of the acts

of the ninth general assembly which apply to the putting in of cattle-guards, the fencing of the road, the injuring, destroying or killing of live-stock, the neglect of agents and employes, shall be held to apply to such companies, lessees or corporations, as though they were specially named therein, and parties suffering injuries from the running and operation of such roads by such parties shall have all the remedies prescribed in said chapter as fully as they now have against the railroad company."

And that the legislature of the State of Iowa enacted a code in 1873, which went into effect on the 1st day of September,
10 1873, in which the foregoing two acts of the legislature were consolidated, modified and changed, as shown by sections 1300 and 1301 as follows:

"SECTION 1300. Any such corporation may sell or lease its railway, property and franchises to or make joint running arrangements with, any corporations owning or operating any connecting railway, and the corporation operating the railway of another shall in all respects be liable in the same manner and extent as though such railway belonged to it, subject to the laws of this state.

"SEC. 1301. Any contract, lease or benefit derived therefrom, contemplated in either of the three preceding sections, may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation."

And your petitioner further says that the legislature of the State of Illinois, on the 12th day of February, 1855, passed an act
11 to enable railroad companies to enter into operative contracts and to borrow money, which reads as follows:

"SECTION 1. All railroad companies incorporated or organized under, or which may be incorporated or organized under the authority of the laws of this state, shall have power to make such contracts and arrangements with each other and with railroad companies of other states, for leasing or running their roads or any part thereof; and also to contract for and hold in fee simple or otherwise, lands or buildings in this or other states, for depot purposes; and also to purchase and hold such personal property as shall be necessary and convenient for carrying into effect the object of this act.

"SEC. 2. All railroad companies incorporated or organized under, or which may be incorporated or organized under as aforesaid, shall have the right of connecting with each other and with the railroads of other states, on such terms as shall be mutually agreed upon by the companies interested in such connection."

And afterwards, on the 30th day of March, 1875, the legis-
12 lature of Illinois passed an act entitled, "An act relating to leases in this state of railroads in adjoining states," which reads as follows:

"SECTION 1. That all railroad companies incorporated or organized, or which may be incorporated or organized under the laws

of this state, or of this and any adjoining state which now are, or at any time hereafter may be in possession of and operating connecting railroads in states adjoinining this state under lease in perpetuity or for a period of not less than twenty years, shall have power to purchase the remaining interests, property and franchises of the lessors of such railroads, situated in such adjoining states, on such terms and conditions as may be agreed upon by the parties, or their assigns, to such lease. Provided that nothing in this act shall be so construed as to authorize any corporation acting by
13 or organizing under the laws of any other state to purchase or otherwise become the owners of any railroad in this state."

And your petitioner further says that prior to 1875 it, the Chicago and North-Western Railway Company became the owner of a bridge across the Mississippi river, by which the aforesaid line of railway, from the city of Chicago to Fulton, was connected with the said Chicago, Iowa and Nebraska railroad at Clinton, Iowa, thereby forming a continuous line of railroad from the city of Chicago to the western line of the State of Iowa; that each of the several railroads hereinbefore mentioned were connected and were operated by the said defendant as a common carrier for the transportation of freight and passengers from all points on said lines, both within and without the State of Iowa.

And petitioner further says that said lines of railway were, prior to the year 1886, connected, at the western boundary of the State of Iowa, with the Sioux City and Pacific railway, which crosses
14 the Missouri river by a bridge, and was connected in the State of Nebraska, at Fremont, with another line of railway known as the Fremont, Elkhorn and Missouri Valley railway, running through the State of Nebraska and into the territories of Dakota and Wyoming, all of which railways are controlled by the said Chicago and North-Western Railway Company.

And petitioner further says that said Chicago and North-Western Railway Company has operated and still operates all of the said lines of railway through the states of Illinois, Iowa and Nebraska in its business as a common carrier, and as such has been and is transporting freight and passengers between all points on said lines of railway in said several states, and has been and is engaged in domestic and inter-state commerce in the use and operation of the same.

And your petitioner further says that by virtue of the several provisions and acts of the legislature of the State of Illinois, and
15 the acts of the legislature of the State of Iowa, said Chicago and North-Western Railway Company on the 1st day of July, 1884, purchased the Chicago, Iowa and Nebraska railway, hereinbefore mentioned, and the said Chicago, Iowa and Nebraska Railway Company, by deed of that date, conveyed all of the property belonging to said grantor to said Chicago and North-Western Rail-

way Company, and on the 2d day of July, 1884, the said Chicago and North-Western Railway Company purchased the Cedar Rapids and Missouri River railroad, and said company conveyed by deed all of its property to said Chicago and North-Western Railway Company, and on the 3d day of July, 1884, the said Chicago and Northwestern Railway Company purchased the Maple River railroad and said Maple River Railroad Company conveyed all of its property by deed to said Chicago and North-Western Railway Company, and on the 24th day of October, 1884, the Chicago and North-Western Railway Company purchased the Stanwood and Tipton railway, the Iowa Midland railroad, the Ottumwa, Cedar Falls and St. Paul railway, the Iowa Southwestern railway and
16 the Des Moines and Minneapolis railroad, and all of the property of the said railroads was conveyed by the said companies by sufficient deeds, bearing date on said day.

And your petitioner further says that the Chicago and North-Western Railway Company paid large sums of money as the consideration of each of said purchases and deeds, amounting in the aggregate to the sum of over forty million dollars.

And your petitioner further says that since it became the owner of the said several lines of railroad and appurtenances thereto, the said Chicago and North-Western Railway Company has continued to own and operate all of the same as a common carrier, and has engaged as such in domestic and inter-state commerce in the State of Iowa, and as such has assumed, and is now under the obligations imposed upon common carriers, and that it acquired the said property, relying on the said several acts of the legislature of the
17 State of Iowa hereinbefore mentioned, permitting it to become the owner of said properties.

By virtue whereof the said Chicago and North-Western Railway Company hath continued to use the said railway in the State of Iowa, and to carry on the business as a common carrier, and to transport passengers and freight from points outside the State of Iowa, to points within the same, and from points within the State of Iowa to points without the state, and from points in other states over and across the State of Iowa to points in other states, without the permit mentioned in the act set forth in the information as it was lawful for it to do.

And petitioner further says that the following statute of the State of Iowa has been in force for several years last past, and is now unrepealed, to wit:

"SEC. 2611. If the action is against any corporation, or person owning or operating any railway, telegraph line, canal, stages, coaches, or cars, or any express company, service may be made
18 upon any general agent of such corporation or person wherever found, or upon any station, ticket or other agent of such corporation, or person transacting the business thereof in the county

where the suit is brought; if there is no such agent in said county, then service may be had upon an agent thereof transacting said business in any other county."

All the railways hereinbefore mentioned, located in the State of Iowa, were owned and controlled by corporations duly organized under and by virtue of the laws of the State of Iowa prior to the lease and purchase of the same by the Chicago and North-Western Railway Company.

Wherefore, your petitioner says that his arrest, restraint and imprisonment is illegal, and he prays that a writ of *habeas corpus* may be issued; that his petition be tried before the Supreme court of the State of Iowa; and that he have judgment discharging him from such arrest, restraint and imprisonment.

19 Petitioner states, that the legality of his imprisonment has not been adjudged upon a prior proceeding of this character.

H. S. BARRON.

Subscribed and sworn to by said Henry Barron before me this 5th day of October, 1886.

[SEAL.] CHAS. P. DAWLEY,
Notary Public in and for Linn County, Iowa.

EXHIBIT A.

An Act Requiring Foreign Corporations to File their Articles of Incorporation with the Secretary of State, and Imposing certain conditions upon such corporations transacting business in this state.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That hereafter any corporation for pecuniary profit other than for carrying on mercantile or manufacturing business, organized under the laws of any other state of of any territory of the United States or of any foreign country desiring to transact its business or to continue the transaction of its business in this
20 state, shall be and hereby is required on and after September (first) A. D. 1886, to file with the Secretary of State a certified copy of its articles of incorporation duly attested, accompanied by a resolution of its board of directors or stockholders, authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state. Said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the Secretary of State shall issue to such corporation a permit in such form as he may prescribe for the general transaction of the business of such corporation. And upon the receipt of such permit, such corporation shall be permitted and authorized to conduct and carry on its business in this state.

Provided that nothing in this act contained, shall be construed to prevent any foreign corporation from buying, selling or otherwise dealing in notes, bonds, mortgages and other securities or from enforcing the collection of the same in the federal courts in the same manner, and to the same extent as is now authorized by law.

SEC. 2. No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized to exercise the power of eminent domain, or exercise any of the rights and privileges conferred upon corporations until they have so complied herewith and taken out such permit.

SEC. 3. Any foreign corporation sued or impleaded in any of the courts of this state upon any contract made or executed in this state, or to be performed in this state, or for any act or omission, public or private, arising, originating or happening in the state, who shall remove any such cause from such state court into any of the federal courts held or sitting in this state, for the cause that such corporation is a non-resident of this state, or a resident of another state than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or authority granted to such corporation to transact business in this state, such forfeiture to be determined from the record of removal, and to date from filing of application on which such removal is effected; and whenever any corporation shall thus forfeit its said permit, no new permit shall be issued to it for the space of three months, unless the executive council shall, for satisfactory reasons, cause it to be issued sooner.

SEC. 4. Any foreign corporation that shall carry on its business and transact the same on and after September 1, 1886, in the State of Iowa, by its officers, agents or otherwise, without having complied with this statute and taken out and having a valid permit, shall forfeit and pay to the state for each and every day in which such business is transacted and carried on the sum of one hundred dollars ($100), to be recovered by suit in any court having jurisdiction; and any agent, officer or employe who shall knowingly act or transact such business for such corporation, when it has no valid permit, as provided herein, shall be guilty of a misdemeanor, and for each offense shall be fined, not to exceed one hundred dollars ($100), or imprisoned in the county jail not to exceed thirty days, and pay all costs of prosecution.

SEC. 5. All acts and parts of acts inconsistent with the provisions hereof are hereby repealed, provided that nothing contained in this act shall relieve any company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon them or required of them, or either of them, by the laws now in force.

Approved April 6, 1886.

24 EXHIBIT B.

STATE OF IOWA, } ss.
LINN COUNTY. }

Before C. W. Burton, justice of the peace in and for Rapids township.

The State of Iowa }
vs. }
Henry Barron. }

The defendant is accused of the crime of knowingly transacting a portion of the business of the Chicago and North-Western Railway Company within the State of Iowa, when such railway company has no valid permit to do business in the State of Iowa, as provided in chapter 76 of the laws of the 21st General Assembly of said State of Iowa, and taking effect September 1, 1886.

For that the said defendant, on the 5th day of October, 1886, at the city of Cedar Rapids, in the county and state aforesaid, well knowing the Chicago and North-Western Railway Company to be a foreign corporation organized under the laws of Illinois, and
25 not a corporation organized under the laws of Iowa, and well knowing that the said Chicago and North-Western Railway Company was such foreign corporation for pecuniary profit other than for carrying on mercantile or manufacturing business, to wit: for the operating of a line of railroad, and well knowing that said railway company has failed, neglected and refused to file its articles of incorporation with the secretary of state of the State of Iowa. And has neglected and refused to request the issuance to such Chicago and North-Western Railway Company of a permit to transact business in said State of Iowa; and well knowing that said railway company has no permit to do business in said State of Iowa, as required by said chapter 76 of the laws of Iowa, passed by the 21st general assembly aforesaid; did knowingly act, as a locomotive engineer for the transaction of the business of said Chicago and North-Western Railway Company within the State of Iowa
26 by running a locomotive engine, with a passenger train attached thereto, through the township of Rapids, in the county and state aforesaid, contrary to law, and the statute in such case made and provided.

(Signed) J. H. PRESTON.

Subscribed and sworn to by J. H. Preston before me this 5th day of October, A. D. 1886.

(Signed) E. C. PRESTON,
Notary Public in and for Linn County, Iowa.

[NOTARIAL SEAL.]

EXHIBIT C.

STATE OF IOWA, } ss.
LINN COUNTY, }

To George W. Burnside, Sheriff of Linn County, Iowa, greeting:

Information on oath having been this day laid before me that the crime of knowingly transacting a portion of the business of the Chicago and North-Western Railway Company within the State of Iowa, when such railway company had no valid permit to do
27 business in the State of Iowa, as provided by chapter 76 of the laws of the 21st General Assembly of the State of Iowa, approved April 6, 1886, and taking effect September 1, 1886, has been committed, and accusing Henry Barron thereof.

You are, therefore, in the name of the State of Iowa, commanded forthwith to arrest the said Henry Barron and bring him before me at my office in Rapids township, in said county, to be dealt with as provided by law.

Witness my hand this 5th day of October, 1886.

C. W. BURTON,
Justice of the Peace.

And said court having inspected said petition and duly con-
28 sidered the same, ordered that the writ issue as prayed for, whereupon a writ was issued, in form as follows:

"IN THE SUPREME COURT OF IOWA.

"OCTOBER TERM, 1886.

"*To George W. Burnside, Sheriff of Linn County, Iowa, Greeting:*

"Whereas, there has been presented to the Supreme court of Iowa the petition of one H. S. Barron, wherein it is alleged that the petitioner is now a prisoner in your custody, under physical control and restraint by you, for the alleged violation of chapter 76 of the laws of Iowa, acts of the 21st General Assembly of said state, and that said arrest, restraint and imprisonment is illegal.

"And petitioner prays that a writ of *habeas corpus* issue, and that his petition may be tried in said Supreme court, etc. And said
29 court having made an order that the writ issue as prayed for, returnable on Monday the 11th day of October, 1886.

"Therefore, you are hereby commanded to produce the body of said H. S. Barron on said 11th day of October, 1886, with the day and cause of his arrest and detention, that his petition may be tried,

and such order and judgment rendered by our said Supreme court as may seem proper in this behalf.

"Witness my signature and the seal of said Supreme court at Des Moines, Iowa, this 7th day of October, 1886.

"G. B. PRAY,

[SEAL.] "*Clk. Sup. Court.*

"Due and legal service of the above and foregoing writ, this 8th day of October, A. D. 1886, is hereby admitted.

"(Signed) GEO. W. BURNSIDE,

"*Sheriff of Linn County, Iowa.*"

30 And on the 19th day of October, 1886, there was filed in the office of the clerk of said court a return to the foregoing writ, such return being in the words and figures following, to wit:

IN SUPREME COURT OF IOWA.

State of Iowa
vs.
Henry Barron.

On petition of said Henry Barron for a writ of *habeas corpus* against Geo. W. Burnside, sheriff of Linn county, Iowa.

Comes now the respondent, Geo. W. Burnside, sheriff of Linn county, Iowa, and for return to the writ hereto attached, and which has been served upon him in this behalf, says:

That it is true that the said Henry Barron is now a prisoner in the custody of this respondent as sheriff of Linn county, Iowa, and that he is charged with the offense against the laws of the State
31 of Iowa in this, to wit: The violation of chapter 76 of the laws of the 21st General Assembly of the State of Iowa, and that he is held upon a warrant issued by C. W. Burton, a justice of the peace for Linn county, aforesaid.

Respondent says that it is true that the said relator when arrested was in the employ of the Chicago and North-Western Railway Company, a corporation organized under the laws of the State of Illinois, and was engaged in assisting to operate the lines of said railroad company through the State of Iowa, by acting as a locomotive engineer on one of the engines of the said company attached to a train which was being drawn through the State of Iowa over the line of railroad track of said company therein, but as to whether said train was a through train engaged in carrying the mails of the United States or not, this respondent has no knowledge or information sufficient to form a belief. But he says that the said train
32 was engaged and being used in the transportation of passengers from point to point within the State of Iowa, and was engaged

in carrying on domestic commerce within the State of Iowa, and that it was under the control of the Chicago and North-Western Railway Company, as aforesaid; and that the said Chicago and North-Western Railway Company is a corporation foreign to the State of Iowa, and that said relator was engaged in assisting said corporation in the exercise of corporate rights and privileges within the State of Iowa contrary to the provisions of said chapter 76 of the laws of the 21st General Assembly of the State of Iowa.

And respondent denies that said chapter 76 is unconstitutional, inoperative and void as to the Chicago and North-Western Railway Company; and says that at and prior to the time said relator avers in his petition that the Chicago and North-Western Railway
33 Company had leased certain roads in said petition named, and the same being the property of corporations organized and existing under and by virtue of the laws of the State of Iowa, there was no law of the State of Iowa or of the State of Illinois then in force authorizing or empowering the said Chicago and North-Western Railway Company or the Galena and Chicago Union Railway Company to lease or make contracts for leasing railroads within the State of Iowa.

Respondent further says that at the time the relator claims that the said Galena and Chicago Union Railway Company leased the lines of the Chicago, Iowa and Nebraska Railway Company, it was not a connecting road with said Chicago, Iowa and Nebraska railway; nor was the Chicago
34 and North-Western railway at the time the relator avers that it, said Chicago and North-Western Railway Company, leased said Chicago, Iowa and Nebraska railway, a connecting road with the lines of said last named road; nor was the Galena and Chicago Union Railway Company at the time the relator avers that it leased the lines of the Cedar Rapids and Missouri River Railway Company a connecting road with the said last named road; nor was the Chicago and North-Western Railway Company at the time the relator claims that it leased the said Cedar Rapids and Missouri River Railway Company lines, a connecting railroad with the lines of the said last named company.

Respondent says that the said Galena and Chicago Union Railway Company and the said Chicago and North-Western Railway Company and the consolidated lines of the two last named companies terminated at the east bank of the Mississippi river and in the State of Illinois; and that at the dates when petitioner claims the said several leases of said railroad lines were made, there was no bridge across the Mississippi river belonging to, leased by, or under the control of the said Chicago and North-Western Railroad
35 Company, connecting the said lines of Illinois railways with the said lines of Iowa railways.

Respondent says that as to whether or not the Chicago and

North-Western Railway Company, on the 1st day of July, A. D. 1884, or at any other time, purchased the lines, etc., of the Chicago, Iowa and Nebraska Railway Company, or whether on the 2d day of July, A. D. 1884, or at any time the said Chicago and North-Western Railway Company purchased the Cedar Rapids and Missouri River Railway Company lines, he has no knowledge or information sufficient to form a belief; nor has he had any knowledge or information sufficient to form a belief with regard to the allegation in relator's petition that the Chicago and North-Western Railway Company has purchased various other lines of railroad within the State of Iowa, and named in said petition, and he therefore denies. And respondent denies that by reason of any or all of the facts set forth in said petition, though true, the relator is entitled to maintain
36 the writ herein sued out under the laws of this state.

For a further return, respondent avers, that by an act of Congress approved May 15, 1856, the United States granted to the State of Iowa, for the purpose of aiding in the construction of certain railroads within said state, every alternate section of land designated by odd numbers for six sections in width on each side of said roads to which said grant was to apply; and that by an act of the legislature of the State of Iowa approved July 14, 1856, the State of Iowa accepted said grant in trust for the purposes for which the same was made by said act of Congress; and respondent says that the 13th section of said act of the General Assembly of the State of Iowa approved July 14, 1856, was as follows:

"SEC. 13. The said companies shall each severally assent to and accept the provisions of this act by a written instrument under
37 the seal of such corporation with the signature of the proper officers within ninety days after the passage of this act. Which said acceptance shall be filed in the office of the secretary of state and by the secretary recorded in the book by him kept for the recording of articles of association."

And that the 14th section of said act was as follows:

"SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General Assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant."

And respondent says that the said Cedar Rapids and Missouri River Railroad Company was one of the railroad companies to which said grant of land so made by Congress applied. That by said act of the General Assembly of the State of Iowa, ap-
38 proved July 14, 1856, the lands thereafter granted to the said Cedar Rapids and Missouri River Railroad Company was granted under the conditions of said act to the Iowa Central Air Line Railway Company. That the said Iowa Central Air Line Railway Company failed to comply with the terms of said grant

and the conditions thereof as stipulated in said act approved July 14, 1856; and thereafter the General Assembly of the State of Iowa, by an act approved March 17, 1860, being chapter 25 of the laws of 1860, resumed all of the rights conferred upon the Iowa Central Air Line Railway Company, and by an act of the general assembly approved March 26, 1860, being chapter 37 of the laws of 1860, granted said lands to the said Cedar Rapids and Missouri River Railway Company; and that by the third section of said last named act, the provisions of the 9th, 10th, 11th, 12th, 13th, 14th and 15th sections of the act of the general assembly approved July 14,
39 1856, were made applicable to the said Cedar Rapids and Missouri River Railway Company. That thereafter, the said Cedar Rapids and Missouri River Railway Company, to wit: on the 19th day of June A. D., 1860, filed with the secretary of state a certificate as provided by said act, accepting the terms and conditions of said grant.

Whereupon respondent says the said Cedar Rapids and Missouri River Railroad Company became subject to the provisions of said section 14 of said act, and that said railroad company and its assigns, lessees or grantees are subject and have at all times remained subject to the provisions of said section 14 of said act of the General Assembly of the State of Iowa.

Respondent further says that all of the railroads mentioned in relator's petition as having been leased, or purchased and now held by the said Chicago and North-Western Railway Company under contracts of lease or purchase with corporations existing under and
40 by virtue of the laws of the State of Iowa, and each and every one of them received aid in the construction and building thereof, by way of the forced taxation of all the taxable property in the several townships through which said several railroads ran, which taxes were voted and levied upon the property in said townships under and by virtue of the laws of the State of Iowa in existence at the time said several lines were so constructed, and that each and every company building and constructing lines of railroad accepted such aid so granted by way of taxation, and thereby became and were subject to all the conditions and restrictions contained in the said several acts of the legislature of the State of Iowa authorizing the same.

And respondent further avers that the said Chicago, Iowa and Nebraska Railway Company and the said Cedar Rapids and Missouri River Railway Company and each and every of the other
41 said railway companies mentioned in relator's petition as now belonging to and being operated by the said Chicago and North-Western Railway Company, within the State of Iowa, in their location and construction were granted, and exercised the right of eminent domain, whereby they were entitled to and did condemn the land over which the lines of the said several railroads were con

structed. And respondent says that all said lines of railroad are a part of the public highways of the state, and as such are exclusively within the control of the legislature of the State of Iowa in regard to all matters pertaining to their operation and control.

And respondent says that said Chicago and North-Western Railway company is a foreign corporation within the meaning of said chapter 76 of the laws of the 21st General Assembly of the State of Iowa, and subject to all the provisions thereof.

42 And respondent, in obedience to the writ issued herein, and which is hereto attached, now brings the said defendant, Henry Barron, before this court, and exhibits this his return to said writ, and because of the matters therein alleged, he prays that the prayer of the relator may be denied and his petition dismissed, and that he, the said Henry Barron, may be remanded to the custody of this respondent to be dealt with as provided by law.

(Signed) GEO. W. BURNSIDE, *Shff.*,
by FRANK H. SEATON, *Deputy.*
GEO. W. BURNSIDE, *Respondent*,
by A. J. BAKER, *Att'y Gen'l.*
J. H. SWEENEY and CHAS. A. BISHOP, *his Attorneys.*

43 On the 25th day of October, 1886, the following proceedings were had, to wit:

H. S. Barron
vs.
Geo. W. Burnside. } *Habeas Corpus* from Linn county.

On this day this cause was continued to the December term, and set for hearing December 9th.

And on the 9th day of December, 1886, there was filed in the office of the clerk of said court a stipulation, the same being in the words and figures following, to wit:

44 IN THE SUPREME COURT OF THE STATE OF IOWA,
DECEMBER TERM, A. D. 1886.

Henry Barron
vs.
George W. Burnside, Sheriff, etc. } *Habeas Corpus.*

STIPULATION.

It is hereby stipulated and agreed by and between the parties hereto, that upon the hearing of said cause, and on the petition and return to the writ of *habeas corpus*, the following shall be taken and

considered as the facts, the same as if they were set up in the pleadings in a formal manner, and as if proven before the court by competent evidence:

1. On the 16th day of August, 1836, the Galena and Chicago Union Railroad Company was organized under a special act of the legislature of the State of Illinois as a corporate body, which act of incorporation was subsequently amended on the 4th day of March, 1837, the 24th day of February, 1847, and the 25th day of February, 1854, as will more fully appear by reference to the several acts, which may be considered as a part of this stipulation; and that by said acts the said company was authorized to construct and operate, among others, a railroad from the city of Chicago to the east bank of the Mississippi river, opposite Clinton, in the State of Iowa, and that under said authority said company constructed a railroad from the city of Chicago to Fulton, on the Mississippi river, and opened the line for business on the 16th day of December, 1855, and that the track was extended from the terminus at Fulton, a distance of one and three-fourths miles, to the end of a bridge across the
45 Mississippi river, of the east shore thereof, to Little Rock Island; an island in said river, during the year 1859.

2. The Albany Bridge Company was organized by an act of the legislature of the State of Illinois, approved February 14, 1857, which is made a part of the stipulation, and was authorized to construct and operate a bridge across the Mississippi river at Clinton, Iowa, and during the year 1859 the said company constructed a bridge from a point on the east bank of the Mississipi river opposite Clinton and in the State of Illinois, a distance of 2,800 feet to, and upon an island known as Little Rock island. The whole of said Little Rock island being in the State of Illinois, and also laid railroad tracks on said bridge and other tracks on Little Rock island, leaving a channel west of the island a distance of about 800 feet without any bridge over the same. The center of said channel west of said island being the dividing line between the States of Illinois and Iowa, and the said tracks and the rails of said tracks on said bridge were connected with the rails of the tracks of the Galena and Chicago Union Railroad Company at the east end of said bridge, so that locomotives and cars were run from the tracks of said railroad company to and upon the tracks of the bridge company, to the terminus thereof on Little Rock island.

Prior to June 18, 1860, the Iowa Land Company, a corporation under the laws of the State of Iowa, was the owner of a certain ferry franchise, with the right to run a ferry across the Mississippi river from Clinton, and of certain boats then and there run by them for the transportation of property and persons across the river. And on that day the said land company entered into a contract, purporting to lease to the Chicago, Iowa and Nebraska Railroad Company, a corporation existing under the laws of the State of Iowa, and at

that time operating a railroad from the west bank of the Mississippi river to Cedar Rapids, the ferry-boat Commodore, with all rights and privileges of the franchise so far as running a ferry between Clinton and the island or Illinois shore was concerned, for a term of six years from July 1, 1860, which lease was, on the 26th day of June, 1862, extended so that the term was to run until the bridge should be constructed from Little Rock Island to Clinton.

On the 26th day of June, 1862, the Albany Bridge Company entered into a contract, purporting to lease to the Chicago, Iowa and Nebraska Railroad Company the railroad bridge and tracks thereon, and all tracks connected therewith on Little Rock Island, and all the franchises, rights and privileges belonging to said company in perpetuity.

3. On the 3d day of July, 1862, the Chicago, Iowa and Nebraska Railroad Company entered into a contract, purporting to be a perpetual lease of its lines of railroad in Iowa to the Galena and Chicago Union Railroad Company, extending from Clinton to Cedar Rapids, and including the tracks on Little Rock Island; also all ferry-
46 boats and all rights to ferry at Clinton; also the railroad bridge from the Illinois shore to Little Rock Island, and all the rights, privileges and franchises in and to the bridge and ferry, and the said line of railroad, in so far as it was competent for the said Chicago, Iowa and Nebraska Railroad Company to make such lease.

4. On the 8th day of July, 1862, the Cedar Rapids and Missouri River Railroad Company, a corporation existing under the laws of the State of Iowa, owning and operating a railroad from Cedar Rapids, where its rails and tracks were connected with the rails and tracks of the Chicago, Iowa and Nebraska Railroad Company, entered into a contract, purporting to be a perpetual lease to the Galena and Chicago Union Railroad Company of its line of railway, and all property connected therewith.

5. From and after the 1st day of February, 1860, the bridge and tracks thereon, together with the ferry over the west channel of the Mississippi river, were used by the Galena and Chicago Union Railroad Company and the Chicago, Iowa and Nebraska Railroad Company for the transportation of freight and passengers from Chicago to Cedar Rapids and beyond, as far as the Cedar Rapids and Missouri River Railroad Company's tracks were completed. That in transacting said business, the cars of the Galena and Chicago Union Railroad Company were run on and over the bridge onto Little Rock Island, where the passengers and freight and cars were transferred by the said ferry to the west bank of the river, and thence by the Chicago, Iowa and Nebraska Railroad Company westward over its lines.

6. On the 7th day of June, 1850, the Chicago and North-Western Railway Company was incorporated under and in pursuance of acts of the legislature of the State of Illinois, and thereby was cre-

ated a corporate body, and was the owner of certain railroad lines in said state, and on the 2d day of June, 1864, the Galena and Chicago Union Railroad Company was consolidated with the Chicago and North-Western Railway Company under the name of the Chicago and North-Western Railway Company, which has ever since continued to exist as a corporate body and to operate railroads in the States of Illinois, Iowa, Wisconsin, Minnesota, Michigan and elsewhere, and that said consolidation was made in pursuance of the laws of the States of Illinois and Wisconsin.

7. During the year 1865, the Chicago and North-Western Railway Company, being then the owner of all the rights and property of the Galena and Chicago Union Railway Company,
47 including whatever rights were acquired by the contract of lease entered into by the Albany Bridge Company to the Chicago, Iowa and Nebraska Railroad Company, and the contract of lease of the Iowa Land Company to the same railroad company, and the contract of lease of the Chicago, Iowa and Nebraska Railroad Company and of the Iowa Land Company to the same railroad company, and the contract of lease of the Chicago, Iowa and Nebraska Railroad Company and of the Cedar Rapids and Missouri River Railroad Company to the Galena and Chicago Union Railroad Company, and then operating a line of railway from Chicago, in Illinois, to the east bank of the Mississippi river on Little Rock island, and from the west bank of the Mississippi river through the State of Iowa to the Missouri river; and using the ferry heretofore referred to between Little Rock island and west shore of the Mississippi river; extended, constructed and completed the bridge across the west channel of the Mississippi river, from Little Rock island to the west bank of said river, and laid railroad tracks thereon connecting the rails with the rails already laid on the west end of said bridge, and also with the rails on the west bank of said river which had been laid by the Chicago, Iowa and Nebraska Railroad Company, claiming the right so to do under the said contracts of lease as heretofore referred to; and from that time on the Chicago and North-Western Railway Company has continuously run its locomotives and cars from the city of Chicago over and across said bridge to points in Iowa, and transported passengers and freight thereon.

The said bridge across the Mississippi river, at Clinton, was made a postal route by act of Congress, approved February 27, 1867.

8. On the 10th day of December, 1869, the Chicago, Iowa and Nebraska Railroad Company made a new contract with the Chicago and North-Western Railroad Company, and therein renewed the contract of lease made by the Chicago, Iowa and Nebraska Railroad Company to the Galena and Chicago Union Railroad Company, dated July 3, 1862, and embraced in said new lease the railroad bridge and ferry, extending from the east bank of the Mississippi river to the city of Cedar Rapids, and therein changed the

amount to be paid as rent and made some other modifications as to the covenants in the original lease. And on the 1st day of December, 1865, the Cedar Rapids and Missouri River Railroad Company made a new contract with the Chicago and North Western Railway Company, and therein renewed the contract of lease of July 8, 1862, made by the Cedar Rapids and Missouri River Railroad Company to the Galena and Chicago Union Railroad Company, changing the amount of rental and certain covenants in the original con-
48 tract of lease. And thereafter the Chicago and North-Western Railway Company extended and completed the line from Cedar Rapids to Council Bluffs, on the Missouri river. And said company, acting as lessee under said contract of lease, used and operated the lines of railroad embraced in said contracts of lease from the east bank of the Mississippi river, where the tracks were connected with the Chicago and North-Western Railway Company's tracks, over and across said bridge, and to points in the State of Iowa, and as soon as completed to Council Bluffs aforesaid, and continued so to do until the making of the deeds hereinafter mentioned.

9. Between the years 1869 and 1884 the Chicago and North-Western Railway Company took control under contracts purporting to be leases, of the following railroads in Iowa, all of which was connected with the Chicago, Iowa and Nebraska railroad or with the Cedar Rapids and Missouri River railroad to wit: the Maple River railroad, the Stanwood and Tipton railroad, the Des Moines and Minneapolis railroad, the Iowa Midland railroad and the Ottumwa, Cedar Falls and St. Paul railroad, and acting under said contracts, the Chicago and North-Western Railway Company operated the same up to the time of the making of the deeds therefor in the year 1884.

10. On the 30th day of November, 1872, the Chicago and North-Western Railroad Company executed a mortgage to the Union Trust Company, of New York, to secure the sum of $18,749,500, upon bonds issued by said company, and conveyed therein among other railroad properties, all the right, title and interest of the Chicago and North-Western Railway Company in and to the Chicago, Iowa and Nebraska Railroad Company and the Cedar Rapids and Missouri River Railroad Company, extending from the east bank of the Mississippi river, opposite Clinton, to Council Bluffs, in the State of Iowa, including the bridge across the Mississippi river at Clinton, with a branch railroad from Clinton to Lyons, which were claimed and held by the said Chicago and North-Western Railway Company under said contracts of lease, in perpetuity to the said Chicago and North-Western Railway Company. That said bonds were issued and sold and are still outstanding, and the mortgage constitutes a lien on said property therein described as security for the payment of the bonds.

11. That the legislature of the State of Illinois on the 12th day of February, 1855, passed an act which reads as follows:

"SECTION 1. All railroad companies incorporated or organized under, or which may be incorporated or organized under the authority of the laws of this state shall have power to make such contracts and arrangements with each other and with railroad companies of other states for leasing or running their roads or any part
49 thereof, and also to contract for and hold in fee simple or otherwise, lands or buildings in this or other states for depot purposes; and also to purchase and hold such personal property as shall be necessary and convenient for carrying into effect the object of this act.

SEC. 2. All railroad companies incorporated or organized under or which may be incorporated or organized as aforesaid, shall have the right of connecting with each other and with the railroads of other states on such terms as shall be mutually agreed upon by the companies interested in such connection."

And afterwards, on the 30th day of March, 1875, the legislature of the State of Illinois passed an act entitled: "An act relating to leases in this state of railroads in adjoining states," which reads as follows:

"SECTION 1. That all railroad companies incorporated or organized or which may be incorporated or organized under the laws of this state, or of this and any adjoining state, which now are or at any time hereafter may be in possession of and operating connecting railroads in states adjoining this state, under lease in perpetuity or for a period of not less than twenty years, shall have power to purchase the remaining interests, property and franchises of the lessors of such railroads situated in such adjoining states, on such terms and conditions as may be agreed upon by the parties, or their assigns, to such leases. Provided that nothing in this act shall be so construed as to authorize any corporation acting by or organized under the laws of any other state to purchase or otherwise become the owners of any railroad in this state."

And several acts of the State of Iowa relating to the leasing or conveyance of railroad property may be referred to in the several statute books and considered as a part of this stipulation.

12. On the 1st day of July, 1884, the Chicago, Iowa and Nebraska Railroad Company executed a deed of conveyance to the Chicago and North-Western Railway Company, a copy of which is hereto attached as "Exhibit A." On the 2d day of July, 1884, the Cedar Rapids and Missouri River Railroad Company executed a deed to the Chicago and North-Western Railway Company, a copy of which is hereto attached as "Exhibit B." In the month of July, 1884, similar deeds were made by the several railroad corporations hereinbefore mentioned as having contracts of lease with the Chicago and North-Western Railway Company, whereby the several

Iowa railway companies undertook to convey all title and interest in the heretofore described property to the Chicago and North-Western Railway Company. Each of said deeds was made upon the consideration named therein, and were recorded during the year 1884 in the several counties in Iowa in which said several roads are located.

50 13. Since the making of the said several deeds all of the railroad tracks constructed by the several corporations in the State of Iowa, and embraced in said conveyances, have been connected with each other, and with the Chicago and North-Western Railway company's tracks originally laid by the Galena and Chicago Union Railroad Company at the east end of the bridge across the Mississippi river at Clinton, and the same have been used and operated by the Chicago and North-Western Railway Company as connected tracks of said company, and trains of locomotives and cars have been made up in the State of Illinois and run into the State of Iowa, and also made up in the State of Iowa and run into the State of Illinois, and said Chicago and North-Western Railway Company has, in the operation of said railroads, been engaged in the business of a common carrier, and in transporting passengers and freight from points in the State of Illinois to points in the State of Iowa, and from points in the State of Iowa to points in the State of Illinois, and also transporting passengers who had purchased tickets from points in Illinois, Wisconsin, Michigan, Indiana and other states east of the same to points in the State of Iowa, and to points in states west of Iowa, and also in carrying freight shipped from points in the States of Illinois, Wisconsin, Michigan, Indiana, and other states east of the same to points in the State of Iowa and to points in states west of Iowa, and also at the same time has been engaged in receiving and carrying passengers and freight from points within the State of Iowa to other points within the same state, and generally has been engaged in commerce among the several states as well as in commerce within the State of Iowa. The Chicago and North-Western Railway Company has also upon all of said lines been engaged in carrying the mails of the United States, but the respondent protests that the petitioner cannot raise any question based on that fact in this case.

14. The petitioner, Henry Barron, at the time he was arrested, was in the employment of the Chicago and North-Western Railway Company, and engaged as an engineer on a locomotive in running a passenger train, which was made up at Chicago, in the State of Illinois, and was destined to Council Bluffs, in Iowa, and that said train was carrying passengers and the United States mails received at different points in the State of Illinois and destined to points in the State of Iowa and beyond, and also from points in the State of Iowa to other points in the same state. While the said Henry Barron was so engaged as an engineer in running said train and was

passing through the county of Linn, in Iowa, he was arrested by the sheriff of said county at the city of Cedar Rapids, charged with a violation of chapter 76 of the Laws of the 21st General Assem-
51 bly of the State of Iowa, a copy of which is attached to the petition in this case, and that he was brought before C. W. Burton, a justice of the peace of said county, to answer to an information there filed against him, a copy of which is attached to the petition herein, marked "Exhibit B." That said arrest was made by the sheriff under the authority of a warrant, a copy of which is attached to the petition as "Exhibit C." That said Henry Barron, as engineer aforesaid, was controlling the engine on said train from Clinton to Boone, in Iowa.

15. The Wall Lake and Sauk City branches, and a part of the Maple River railroad received local aid in the way of a forced taxation of the property of the several townships through which they were constructed, which tax was voted under the several laws of Iowa authorizing the same, and the aid was accepted by the road on the conditions contained in said several leases.

16. Each of the corporations aforesaid which constructed railroads in the State of Iowa exercised the right of eminent domain in procuring right of way when it was necessary to do so and they were unable to obtain the same by agreement.

17. Under act of the general assembly of Iowa, approved July 14, 1856, the Iowa Central Air Line Railway Company accepted a grant of lands as in said act provided, and on the day of 18 , said company filed in the office of the secretary of state, by authority of its board of directors, its acceptance in writing, as appears by a copy thereof hereto annexed as "Exhibit C," which is made a part of this stipulation. And thereafter, and by reason of the failure on the part of the Iowa Central Air Line Railway Company to comply with the terms of said grant as mentioned in said act of the general assembly of Iowa, and the said grant having been resumed by the legislature by act of the general assembly, there was granted to the Cedar Rapids and Missouri River Railroad Company all such lands as had been included in the grant to the Iowa Central Air Line Railway Company by an act of the general assembly of the State of Iowa, approved March 25, 1860, and that said grant was accepted by the Cedar Rapids and Missouri River Railroad Company, which, on the 19th day of June, 1860, filed in the office of the secretary of state its acceptance in writing, a copy of which is hereto annexed and made a part hereof as "Exhibit D."

The Maple River Railroad Company, hereinbefore referred to, was incorporated under the laws of Iowa, June 10, 1876. The articles of incorporation were amended June 9, 1879, and were amended a second time on the 17th day of May, 1882. The Des Moines and Minneapolis Railroad Company, before referred to, was incorporated under the laws of Iowa on August 1, 1870, and

52 amended July 5, 1877. The said Ottumwa, Cedar Rapids and St. Paul Railroad Company was incorporated under the laws of Iowa, July 2, 1883, and the articles of incorporation were amended December 18, 1883.

The Chicago, Iowa and Nebraska Railroad Company was organized January 26, 1856. The Cedar Rapids and Missouri River Railroad Company was organized June 14, 1859. The Iowa Midland was organized March 2, 1870.

The articles of incorporation and amendments thereto herein referred to, have been filed in the office of the secretary of state of Iowa.

18. It is admitted by the respondents that the Chicago and North-Western Railway Company paid the consideration named in the deeds to them, hereinbefore referred to, and that the amount therein named, and the manner of paying the same, is correct, as therein stated.

19. The Chicago and North-Western Railway Company has not complied with chapter 76 of the laws of the twenty-first general assembly of the State of Iowa by taking out a permit, as therein required.

20. All of said facts herein agreed to are made subject to the right to either party to object to the same because irrelevant or immaterial, each party reserving the right on the hearing to object to any fact, upon the ground that it is irrelevant or immaterial.

W. C. GOUDY,
For Petitioner.
A. J. BAKER,
For Respondent.

EXHIBIT A.

This indenture, made this first day of July, A. D. 1884, by and between the Chicago, Iowa and Nebraska railroad, a corporation by that name incorporated under the laws of the State of Iowa, and owning the railroad property hereinafter described, situated in that state, party of the first part, and the Chicago and North-Western Railway Company, a corporation incorporated under the laws of the States of Illinois, Wisconsin and Michigan, and owning and operating railroads in those states, party of the second part, witnesseth:

Whereas, By virtue of a certain indenture of lease, bearing date the third day of July, 1862, and a certain agreement, in writing, amendatory thereof, bearing date the 10th day of December, A. D. 1869, all the railroad property hereinafter more particularly described was granted, demised and leased by the party of the first part hereto, to the party of the second part, for and during a term exceeding twenty years, that is to say: the full term of the corporate

existence of the said party of the first part, under their existing charter, and under any renewal or extension thereof; and

53 Whereas, The said party of the second part has been in full possession of all said railroad property, and has been and is now operating the same under the provisions of said indenture and agreement, the lines of railroad of said first party connecting with the lines of railroad of said second party so as to form one connecting line of railroad for uninterrupted railroad traffic or business over the whole lines of railroad of said parties hereto; and

Whereas, The said party of the first part has sold, and said party of the second part has purchased the remaining interests, property and franchises of the said party of the first part, after the execution and delivery of said lease; and

Whereas, The terms and conditions of such sale and purchase as agreed upon by the respective boards of directors of the said parties have been approved and ratified by more than three-fourths in interest of the stockholders of said party of the first part, and by more than two-thirds in interest of the stockholders of the said party of the second part, in annual meeting assembled; and

Whereas, The said parties hereto are expressly authorized to make such sale and purchase by the laws of the said states in which the same are located respectively;

Now Therefore: For the purpose of giving full effect to such purchase and sale, the said party of the first part, for and in considera tion of fifty-eight thousand seven hundred and forty-three shares of the common capital stock of the said party of the second part, the receipt of which is hereby acknowledged, and for divers other good and valuable considerations received from said party of the second part, has granted, bargained, sold and conveyed, and by these presents does grant, sell and convey, to said party of the second part, its successors and assigns, all its remaining right, title and interest, after the execution and delivery of the indenture of lease hereinbefore referred to, in and to the following described railroad property, that is to say:

The entire line of railway or railroad, constructed by said party of the first part, in Iowa, extending from Clinton, in Clinton county, to Cedar Rapids, and known as the Chicago, Iowa and Nebraska Railroad, including its interest in the tracks upon Little Rock Island, owned by the Albany Bridge Company, as lessors of said party of the first part, and used by said party of the second part under the provisions of the lease above mentioned; together with all the rights, benefits, concessions and interests of said party of the first part, which they have, or may have, under and by virtue of their

54 charter of incorporation and rights of association under the laws of the State of Iowa.

And all property which they may own, have or possess, whether real or personal, which is in anywise incident and appurtenant to

said lines of railroad, and occupied, owned and used as a part thereof, and in connection therewith, in the States of Iowa and Illinois (excepting the office building and the lot on which it stands in said city of Clinton), including all rights, benefits and privileges, owned, exercised, used, controlled and possessed by said company, or by said party of the second part, under and by virtue of the provisions of said lease, together with the right of way, road-bed, side-tracks, turn-outs, switches, depot and depot grounds, storage grounds, wood-yards, cattle yards and warehouses, and all engines, locomotives, passenger, freight, platform, gravel, wood and hand cars, and wood and water houses, water tanks, turn-tables, machine shops, machinery, rolling stock and fixtures; and all grounds, lots, real estate and appurtenances of said railroad of said party of the first part which are now owned, used and possessed incident to the enjoyment of the same, or to which said parties are entitled, or to which they may hereafter be entitled, or may hereafter acquire for such necessary use.

And also, all the right, title and interest of said party of the first part, remaining to it after the execution of said lease, of the railroad bridge, leased to said party of the first part by the Albany Railroad Bridge Company, which extends from the Illinois bank of the Mississippi river to the island in said river called Little Rock Island, and from the west bank of said island to and across the main channel of said Mississippi river, to the western bank of said river in the city of Clinton, and in and to the appurtenances of the same, and in and to all the rights, interests and privileges, including the rights to real and personal property, which said party of the first part have acquired from the Iowa Land Company, or which they are entitled to as incident to the use and operation of said railroad by virtue of any valid contract or contracts, whether written or parol; and also, in and to all rights, interests, benefits and privileges which said party of the first part may have in the Albany Railroad Bridge Company, or to which they are entitled by virtue of any contract or agreement made by and between said last named company with the party of the first part, or otherwise.

And any and all property relating or incident to said railroad for the use and operation thereof by said party of the first part, in Iowa or Illinois, and used by said party of the first part, or by said party of the second part under the provisions of said lease, in operating said railroad above described, and the said bridge above described, and also all franchises which the said party of the first
55 part has, possesses or enjoys, whether from the State of Iowa or from the United States, in connection with, or part of, or as appertaining to said railroad and railroad bridge, including all the rights which said party of the first part has under the laws of the State of Iowa to renew or extend the charter of the said party of the first part at any time hereafter (should the said party of the

second part desire to so extend or renew the same): To have and to hold all the above mentioned property, rights, interests, benefits, privileges, possessions and franchises unto the said party of the second part, their successors and assigns, to the same extent, for all intents and purposes whatsoever, as the same were held by said party of the first part, under the laws of said State of Iowa, before the execution and delivery hereof.

In witness whereof, the said party of the first part has caused these presents to be signed by its president and secretary, and its corporate seal to be hereto affixed, the day and year first above written.

CHICAGO, IOWA AND NEBRASKA RAILROAD.
By HORACE WILLIAMS,
[L. S.] *President.*
J. VANDEVENTER,
Secretary.

STATE OF IOWA, } ss.
CLINTON COUNTY. }

Be it remembered, that on this fifth day of July, A. D. 1884, before me, the undersigned, a Notary Public, in and for the said county, personally came Horace Williams and J. VanDeventer, who are to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, as president and secretary of the Chicago, Iowa and Nebraska railroad, the grantor therein named, and acknowledged said instrument to be the act and deed of the said company, by the several officers whose names are subscribed to said instrument thereunto appointed, voluntarily done and executed.

In witness whereof, I have hereunto set my hand and notarial seal, on the day and year in this certificate above written.

R. C. A. FLOURNOY,
[L. S.] *Notary Public.*

EXHIBIT B.

56 This indenture, made this second day of July, A. D. 1884, by and between the Cedar Rapids and Missouri River railroad, a corporation of the State of Iowa, owning the railroad property hereinafter described, situated in said state, party of the first part, and the Chicago and North-Western Railway Company, a corporation of the States of Illinois, Wisconsin and Michigan, owning and operating railroads in said states and in said State of Iowa, party of the second part, witnesseth:

Whereas: By virtue of a certain indenture of lease, bearing date the 3d day of July, A. D. 1862, and a certain other indenture of lease, bearing date the first day of December, A. D. 1865, amend-

atory and supplementary to said first named indenture, all the railroad property hereinafter more particularly described, was granted, demised and leased, by the party of the first part hereto, to the party of the second part hereto, for and during a term exceeding twenty years; that is to say, for the term of the charter of the said party of the first part, and for the term of any extension or renewal thereof, by the act of the legislature, or by any reorganization;

And whereas: The said party of the second part has been and is now in full possession of all said railroad property, and has been and is now operating the same under the provisions of said two indentures of lease;

And whereas: The said party of the second part has, before the execution and delivery hereof, purchased, and now owns in fee all the railroad property of the Chicago, Iowa and Nebraska railroad, situated in said state, all said railroad property having been conveyed to said party of the second part by deed, duly executed and delivered;

And whereas: Said party of the second part is in possession of said railroad property, under the provisions of said purchase, and deed of conveyance, and is operating the same;

And whereas: The lines of railroad of said first party hereinafter described, connect with the lines of said party of the second part at Cedar Rapids and Clinton, Iowa, so as to form connecting lines of railroad, for uninterrupted railroad traffic and business, over the whole lines of railroad of the parties hereto;

And whereas: Said party of the second part has purchased the remaining interests, property and franchises of the said party of the first part, after the execution and delivery of said leases, in and to the whole of said railroad property hereinafter described;

57 And whereas: The terms and conditions of such sale and purchase, as agreed upon by the respective boards of directors of the said parties, have been approved and ratified by more than three-fourths in interest of the stockholders of the said party of the first part and by more than two-thirds in interest of the stockholders of said party of the second part, in annual meeting assembled;

And whereas: Each of said parties are expressly authorized to make such sale and purchase by the laws of the said states in which the same are located, respectively;

Now, therefore: For the purpose of giving full effect to such purchase and sale, the said party of the first part, for and in consideration of sixty-eight thousand, five hundred and four shares of the common capital stock of the said party of the second part, the receipt of which is hereby acknowledged, and in farther consideration of the guaranty by said party of the second part of the payment, principal and interest, of the seven per cent. mortgage bonds of said party of the first part, to the aggregate amount of four millions, three hundred and eighty-three thousand dollars, and for other good

and valuable considerations received from said party of the second part, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell and convey to said party of the second part, its successors and assigns, all its remaining right, title and interest, after the execution and delivery of the said indentures of lease, hereinbefore referred to, in and to the following described railroad property, that is to say: The entire line of railroad or railway constructed by said party of the first part in Iowa, extending from a connection with the railroad of the party of the second part in Cedar Rapids, Iowa, to the east bank of the Missouri river in the city of Council Bluffs, in said state, and known as the Cedar Rapids and Missouri River railroad, together with the rights of way, structures and superstructures, station and station grounds, depots and all other appurtenances, appendages, fixtures and real and personal property in any way or manner connected with and belonging to said railroad or incident thereto; and all side-tracks, turn-tables, turn-outs, bridges and culverts, and all the rights, privileges and possessions of said railroad; and also all franchises which said party of the first part may have in connection with and as part of, or as appertaining to said railroad, including all the rights which said party of the first part has under the laws of the State of Iowa to renew or extend the charter of said party of the first part at any time hereafter, should said party of the first part desire to so renew or extend the same; and also, all the remaining right, title and interest of said party of the first part, after the execution and delivery of the said indentures of lease, hereinbefore referred to, in and to
58 the railroad connecting with the lines of said party of the second part in Clinton, Iowa, and extending to Lyons, in the State of Iowa, and known as the Lyons Branch of the railroad of said party of the first part, together with the rights of way, structures, superstructure, stations and station grounds, depots and all appurtenances and appendages, fixtures and real and personal property in any way or manner connected with and belonging to said railroad, or incident thereto, with all side-tracks, turn-tables, turn-outs, bridges and culverts, and all the rights, privileges, franchises and possessions of said railroad.

It is the true intent and meaning of this conveyance to convey to said party of the second part all the railroads of said party of the first part, and the property and franchises owned in connection therewith for the purposes of the operation thereof.

To have and to hold all the above mentioned property, rights, interest, benefits, privileges, possessions and franchises unto said party of the second part, their successors and assigns, to the same extent, for all intents and purposes whatsoever, as the same were held by said party of the first part under the laws of the State of Iowa, before the execution and delivery hereof.

In witness whereof, the said party of the first part has caused

these presents to be signed by president and secretary and its corporate seal to be hereto affixed, the day and year first above written.

CEDAR RAPIDS AND MISSOURI RIVER RAILROAD,
By HORACE WILLIAMS, *President.*
[L. S.] P. E. HALL, *Secretary.*

STATE OF IOWA, } ss.
LINN COUNTY. }

Be it remembered, that on this seventh day of July, A. D. 1884, before me, the undersigned, a notary public in and for the said county, personally came Horace Williams and P. E. Hall, who are to me personally known to be the identical persons whose names are subscribed to the foregoing instrument, as president and secretary of the Cedar Rapids and Missouri River railroad, the grantor therein named, and acknowledged said instrument to be the act and deed of the said company, by the several officers whose names are subscribed to said instrument thereto appointed, voluntarily done and executed.

In witness whereof, I have hereunto set my hand and notarial seal, on the day and year in this certificate above written.

[L. S.] CHAS. H. CLARK, *Notary Public.*

59 And on the 10th day of December, 1866, said cause was duly submitted to the court upon the foregoing record, the record entry of such submission being as follows:

"H. S. Brown,
vs.
Geo. W. Burnside, Sheriff. } *Habeas Corpus*, from Linn County.

On this day this case was submitted on the printed petition, stipulation and argument of counsel printed and oral.

And the cause having been duly considered, an opinion in writing was filed on the 15th day of December, 1876. Said decision being in the words and figures following, to wit:

(The same opinion applies to two other cases.)

Henry Barron,
vs.
George W. Burnside, Sheriff. } *Habeas Corpus.*

The petitioners being in custody of the several defendants as sheriffs of their respective counties, charged with infraction
60 of the laws of this state, severally ask that they be discharged.

The cases above named were argued and submitted together, and as they are substantially alike, but a single opinion is deemed necessary.

DEXTER, HERRICK & ALLEN,
W. C. GOUDY and J. W. CAREY,
For the Petitioners.
A. J. BAKER, *Attorney General,*
J. H. SWEENEY, and
CHARLES A. BISHOP,
For the Defendants.

Per Curiam. The petitioner Goodell, at the time he was arrested by the sheriff, was in the employment of the Chicago, Burlington and Quincy Railroad Company as a freight conductor, and as such was aiding in moving from the city of Chicago to the city of Denver one of the trains of said railroad company, loaded with merchandise, delivered to said company in the city of Chicago, to be transported to the cities of Omaha, Denver, Kansas City, and
61 other points beyond the State of Iowa, and to points in the State of Iowa, and to points in the States of Nebraska, Missouri and Kansas, to be delivered at said points to certain consignees named.

To enable said company to perform the service above stated, it became necessary to run said train over that part of said road of said company, extending from the Mississippi to the Missouri river in the State of Iowa. While the said petitioner was so engaged, in the State of Iowa, he was arrested by the defendant, Kruchbaum, as sheriff of Des Moines county, charged with a violation of chapter seventy-six of the laws of the twenty-first general assembly of the State of Iowa.

The petitioner Wingate was also in the employment of the said company as agent, in the city of Des Moines, in this state, and at the time he was arrested was engaged in the performance of his duties as agent in selling tickets to various points, both within and without the State of Iowa; and he was also engaged in soliciting and receiving for transportation and collecting tolls therefor, merchandise and traffic destined from said city of Des Moines to points within and without the State of Iowa, and within other states.

While so engaged in the performance of said duties, the said Wingate was arrested by the defendant Painter, as sheriff of Polk county, Iowa, charged with having violated the provisions of the said chapter of the twenty-first general assembly of the State of Iowa.

The petitioner Barron, when arrested, was in the employment of the Chicago and North-Western Railway Company as an engineer, engaged in running a passenger train made up at Chicago, in the

State of Illinois, and destined to Council Bluffs, in the State of Iowa. Said train was carrying passengers and the United States mails, received at different points in the State of Illinois, and destined
63 to points in the State of Iowa and beyond, and also from points in the State of Iowa to other points in the same state. While the petitioner was so engaged, he was arrested, charged with the violation of the said chapter seventy-six of the laws of the twenty first general assembly of the State of Iowa.

It is insisted by counsel for the petitioners that said chapter seventy-six is unconstitutional and void, because (I.) it "is repugnant to Section ten, Article one of the Constitution of the United States, and Section twenty-one, Article one of the Constitution of Iowa, which provides that no law shall be passed impairing the obligation of contracts."

II. Said "statute is contrary to Section eight of Article one of the United States Constitution, which provides that Congress shall have power to regulate commerce with foreign nations and among the several states."

III. Said "statute is repugnant to the Fourteenth Amend-
64 ment to the Constitution of the United States, and therefore void."

IV. Said statute "is void as an attempt to interfere with the jurisdiction of the Federal courts, as established by the Constitution of the United States and the Acts of Congress."

These several propositions have been exhaustively argued by counsel, and in relation thereto we desire to say that their solution presents grave difficulties. As to all the propositions but one, this court is not the final arbiter, and therefore believing, as some of us do, that it is doubtful what construction of the Constitution of the United States and the acts of Congress should be adopted, under the agreed statement of facts we feel constrained to hold that the statute above mentioned is not in conflict with the Constitution of the United States or acts of Congress passed in pursuance
65 thereof, to the end that the questions presented may be determined by the Supreme court of the United States. The petitioners will therefore be remanded to the custody of the defendants, and such judgment will be accordingly entered."

And on the same date, a final judgment was entered against the petitioner, the same being in the words and figures following, to wit:

"Henry Barron
vs.
Geo. W. Burnside, *Sheriff.*

Habeas Corpus. In this cause, the court being fully advised in the premises, file their written opinion, refusing writ, and remanding the prisoner to custody. It is further ordered that pending the tak-

ing of necessary steps to present the question involved to the Supreme court of the United States, the order to remand the prisoners is hereby suspended for thirty days, and that a writ of *procedendo* issue accordingly. It is further considered by the court, that the petitioner pay the costs of this appeal, taxed at $24.40, and that
66 execution issue therefor."

And on the 21st day of December, 1886, further proceedings were had and duly entered of record, as follows:

Henry Barron
vs.
Geo. W. Burnside, *Sheriff*.

Habeas Corpus. On this day the court made the following order in this case: "Now, to wit: December 21st, the order heretofore entered, *suspending* the order to remand Henry Barron to the custody of G. W. Burnside, sheriff of Linn county, Iowa, is hereby set aside, and the order to remand said Barron into custody, as provided in the opinion of this court filed on the 15th day of December, 1886, is made absolute, whereupon Henry Barron prays a writ of error to the Supreme court of the United States, which is
67 hereby allowed and signed by the chief justice of this court."

And on the 23d day of December, 1886, there was filed in the office of the clerk of said court, a writ of error for the removal of said cause to the Supreme court of the United States, and a citation, the originals of which are hereto attached and returned herewith as a part of the transcript, and true copies thereof remain on file in the office of said clerk.

68 UNITED STATES OF AMERICA, ss.

THE PRESIDENT OF THE UNITED STATES.

To the honorable the Judges of the Supreme court of the State of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme court, before you, between Henry Barron, petitioner, and Geo. W. Burnside, sheriff of Linn county, Iowa, defendant, wherein was drawn in question the validity of a statute of the State of Iowa, on the ground of such statute being repugnant to the constitution and laws of the United States, and the decision was in favor of the validity of such state statute, and wherein was claimed by said Baron, a title, right, privilege and immunity under the constitution and laws of the United States, and the decision of said court was against the title, right, privilege and immunity specially set up and claimed therein, a manifest error hath happened, to the great damage of the said Henry

Barron, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceeding aforesaid, with all things concerning the same, to the Supreme court of the United States, together with this writ, so that you have the same at Washington, on the third Wednesday of January, 1887, next, in the said Supreme court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the honorable Morrison R. Waite, chief justice, of the said Supreme court, the 21st day of December, in the year of our Lord one thousand eight hundred and eighty-six.

[SEAL] E. R. MASON,
Clerk of the Circuit court of the United States, Southern District of Iowa.
Allowed by AUSTIN ADAMS,
Chief Justice Supreme Court of Iowa.

December 21, 1886.

Filed Dec. 23, 1886. G. B. Pray, Clerk Sup. Court.

69 STATE OF IOWA.

To Geo. W. Burnside, Sheriff of Linn County, Ia., Greeting:

You are hereby cited and admonished to be and appear at the Supreme court of the United States to be holden at Washington on the third Wednesday of January, 1887, next, pursuant to a writ of error filed in the clerk's office of the Supreme court of Iowa, wherein Henry Barron was plaintiff in error to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness: Hon. Austin Adams, chief justice of the Supreme court of the State of Iowa, this twenty-first day of December, in the year of our Lord one thousand eight hundred and eighty six.

AUSTIN ADAMS, *Chief Justice Supreme Court of Iowa.*

Filed December 23, 1886, G. B. Pray, Clerk Sup. Court.

I certify that I served the within notice at Des Moines, Iowa, 09½ December 22d, 1886, by reading it and giving a copy of it to A. J. Baker, attorney for within named Geo. W. Burnside, sheriff, etc., and attorney general for the State of Iowa.

EDW. CAMPBELL, JR., *U. S. Marshal.*
By S. S. ETHRIDGE, *Deputy.*

Fees, $2.60.

STATE OF IOWA, SS.

70 I, G. B. Pray, clerk of the Supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the pleadings, agreed statement of facts and record entries of a cause in said court, wherein Henry S. Barron was petitioner and Geo. W. Burnside, sheriff, etc., respondent, as full true and complete as the same remain on file, and of record in my office, such transcript constuting a full and complete copy of the pleadings and record whereon said cause was tried and submitted, as well as the decision and final judgment and orders of said court.

And I further certify, that true and correct copies of the writ of error and citation are retained in my office, and the originals are hereto attached and made a part of this transcript, and this return is made in obedience to said writ.

In testimony whereof, witness my signature and official seal this 30th day of December, A. D. 1886.

[SEAL.]

G. B. PRAY, *Clerk Supreme Court of Iowa.*

STATE OF IOWA, ss.

I, G. B. Pray, clerk of the Supreme court of Iowa, do hereby certify that the foregoing is a true and correct transcript of the pleadings, agreed statement of facts and record entries of a cause in said court, wherein Henry S. Barron was petitioner and Geo. W. Burnside, sheriff, etc., respondent, as full true and complete as the same remain on file, and of record in my office, such transcript constuting a full and complete copy of the pleadings and record whereon said cause was tried and submitted, as well as the decision and final judgment and orders of said court.

And I further certify, that true and correct copies of the writ of error and citation are retained in my office, and the originals are hereto attached and made a part of this transcript, and this return is made in obedience to said writ.

In testimony whereof, witness my signature and official seal this 30th day of December, A. D. 1886.

[SEAL.]

G. B. PRAY, *Clerk Supreme Court of Iowa.*

Filed 3/87 25 Miller

121-186

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1335

PETITION OF HENRY BARRON FOR A WRIT OF HABEAS CORPUS.

FILED JANUARY 1887.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No.

PETITION OF HENRY BARRON FOR A WRIT OF HABEAS CORPUS.

To the Honorable the Supreme Court of the United States:

Your petitioner, Henry Barron, a citizen and resident of the State of Iowa, respectfully states:

That he is now a prisoner in the custody of George W. Burnside, sheriff of Linn county, Iowa, under physical control and restraint by said sheriff, at the city of Cedar Rapids, for a supposed criminal offense, to wit: for the violation of chapter 76 of the laws of the 21st General Assembly of the State of Iowa; a copy of which said chapter 76 is hereto attached and marked Exhibit "A."

Your petitioner further states, that the information under said chapter 76 was filed against your petitioner on the fifth day of October, 1886, in the office of C. W. Burton, a justice of the peace for Linn county, Iowa, a copy of which said information is hereto attached, marked Exhibit "B" and made a part of this petition.

Your petitioner avers that said justice of the peace did, pursuant to said information filed as aforesaid before him, issue a warrant for the arrest of petitioner; a copy of which said warrant is hereto attached, marked Exhibit "C," and made part of this petition; that said justice of the peace, placed said warrant in the hands of G. W. Burnside, sheriff of Linn county; that said sheriff, by virtue of the pretended authority of said writ, did arrest petitioner, and now holds him in corporeal restraint, and imprisonment by virtue thereof.

Your petitioner further states, on the 6th day of October, 1886, he presented to the Supreme court of Iowa a petition, praying for a writ of *habeas corpus*, which was granted and made returnable on the 11th day of the same month, and which was returned by the said George W. Burnside, sheriff, as aforesaid, with the reasons for the arrest and detention, and afterwards such proceedings were had by and before the Supreme court of Iowa, so that on the 15th and

21st days of December, 1886, final orders were made, refusing to discharge your petitioner, and remanding him to the custody of said sheriff, as will more fully appear by a printed transcript of the proceedings presented herewith.

Your petitioner further states that his imprisonment and detention is unlawful, because the statute aforesaid, by virtue of which he was arrested, is repugnant to the following provisions of the constitution of the United States, to wit:

1st. To section 10, article I, which provides that no law shall be passed impairing the obligation of a contract.

2d. To section 8, article I, which provides that Congress shall have power to regulate commerce with foreign nations and among the several states.

3d. To the 14th amendment, which provides that no person shall be deprived of his property without due process of law; and

4th. To the provisions establishing the jurisdiction of the Federal courts, and the acts of Congress passed in pursuance thereof.

Your petitioner states the following facts, which are deemed to be, or are claimed to be, material to the determination of the question as to the validity of chapter 76 of the Laws of the 21st General Assembly of the State of Iowa, approved April 6, 1886, under which he is now detained in custody.

1. On the 16th day of August, 1836, the Galena and Chicago Union Railroad Company was organized under a special act of the legislature of the State of Illinois as a corporate body, which act of incorporation was subsequently amended on the 4th day of March, 1837, the 24th day of February, 1847, and the 25th day of February, 1854, as will more fully appear by reference to the several acts as printed in the laws of Illinois; and that by said acts the said company was authorized to construct and operate, among others, a railroad from the city of Chicago to the east bank of the Mississippi river, opposite Clinton, in the State of Iowa, and that under said authority said company constructed a railroad from the city of Chicago to Fulton, on the Mississippi river, and opened the line for business on the 16th day of December, 1855, and that the track was extended from the terminus at Fulton, a distance of one and three fourths miles, to the end of a bridge across the Mississippi river, from the east shore thereof, to Little Rock island, an island in said river, during the year 1859.

The Albany Bridge Company was organized by an act of the legislature of the State of Illinois, approved February 14, 1857, to which reference is made, and was authorized to construct and operate a bridge across the Mississippi river at Clinton, Iowa, and during the year 1859, the said company constructed a bridge from a point on the east bank of the Mississippi river opposite Clinton and in the

State of Illinois, a distance of 2,800 feet to, and upon an island known as Little Rock island. The whole of said Little Rock island being in the State of Illinois, and also laid railroad tracks on said bridge and other tracks on Little Rock island, leaving a channel west of the island, a distance of about 800 feet, without any bridge over the same. The center of said channel west of said island being the dividing line between the States of Illinois and Iowa, and the said tracks and the rails of said tracks on said bridge were connected with the rails of the tracks of the Galena and Chicago Union Railroad Company at the east end of said bridge, so that locomotives and cars were run from the tracks of said railroad company to and upon the tracks of the bridge company, to the terminus thereof on Little Rock island.

Prior to June 18, 1860, the Iowa Land Company, a corporation under the laws of the State of Iowa, was the owner of a certain ferry franchise, with the right to run a ferry across the Mississippi river from Clinton, and of certain boats then and there run by them for the transportation of property and persons across the river. And on that day the said land company entered into a contract, purporting to lease to the Chicago, Iowa and Nebraska Railroad Company, a corporation existing under the laws of the State of Iowa, and at that time operating a railroad from the west bank of the Mississippi river to Cedar Rapids, the ferry-boat Commodore, with all rights and privileges of the franchise so far as running a ferry between Clinton and the island or Illinois shore was concerned, for a term of six years from July 1, 1860, which lease was, on the 26th day of June, 1862, extended so that the term was to run until the bridge should be constructed from Little Rock Island to Clinton.

On the 26th day of June, 1862, the Albany Bridge Company entered into a contract, purporting to lease to the Chicago, Iowa and Nebraska Railroad Company the railroad bridge and tracks thereon, and all tracks connected therewith on Little Rock Island, and all the franchises, rights and privileges belonging to said company in perpetuity.

On the 3d day of July, 1862, the Chicago, Iowa and Nebraska Railroad Company entered into a contract, purporting to be a perpetual lease of its lines of railroad in Iowa to the Galena and Chicago Union Railroad Company, extending from Clinton to Cedar Rapids, and including the tracks on Little Rock Island, also all ferry-boats and all rights to ferry at Clinton, also the railroad bridge from the Illinois shore to Little Rock Island, and all the rights, privileges and franchises in and to the bridge and ferry, and the said line of railroad, in so far as it was competent for the said Chicago, Iowa and Nebraska Railroad Company to make such lease.

On the 8th day of July, 1862, the Cedar Rapids and Missouri River Railroad Company, a corporation existing under the laws of the State of Iowa, owning and operating a railroad westward from Cedar Rapids, where its rails and tracks were connected with the rails and tracks of the Chicago, Iowa and Nebraska Railroad Company, entered into a contract, purporting to be a perpetual lease to the Galena and Chicago Union Railroad Company of its line of railway, and all property connected therewith.

From and after the 1st day of February, 1860, the bridge and tracks thereon, together with the ferry over the west channel of the Mississippi river were used by the Galena and Chicago Union Railroad Company and the Chicago, Iowa and Nebraska Railroad Company, for the transportation of freight and passengers from Chicago to Cedar Rapids and beyond, as far as the Cedar Rapids and Missouri River Railroad Company's tracks were completed. That in transacting said business, the cars of the Galena and Chicago Union Railroad Company were run on and over the bridge onto Little Rock Island, where the passengers and freight and cars were transferred by the said ferry to the west bank of the river, and thence by the Chicago, Iowa and Nebraska Railroad Company westward over its lines.

On the 7th day of June, 1859, the Chicago and North-Western Railway Company was incorporated under and in pursuance of acts of the legislature of the State of Illinois, and thereby was created a corporate body, and was the owner of certain railroad lines in said state, and on the 2d day of June, 1864, the Galena and Chicago Union Railroad Company was consolidated with the Chicago and North-Western Railway Company under the name of the Chicago and North-Western Railway Company, which has ever since continued to exist as a corporate body and to operate railroads in the States of Illinois, Iowa, Wisconsin, Minnesota, Michigan and elsewhere, and that said consolidation was made in pursuance of the laws of the States of Illinois and Wisconsin.

During the year 1865 the Chicago and North-Western Railway Company, being then the owner of all the rights and property of the Galena and Chicago Union Railroad Company, including whatever rights were acquired by the contract of lease entered into by the Albany Bridge Company to the Chicago, Iowa and Nebraska Railroad Company, and the contract of lease of the Iowa Land Company to the same railroad company, and the contract of lease of the Chicago, Iowa and Nebraska Railroad Company, and of the Iowa Land Company to the same railroad company, and the contract of lease of the Chicago, Iowa and Nebraska Railroad Company and of the Cedar Rapids and Missouri River Railroad Company to the Galena and Chicago Union Railroad Company, and

then operating a line of railway from the city of Chicago in Illinois to the east bank of the Mississippi river on Little Rock Island, and from the west bank of the Mississippi river through the State of Iowa to the Missouri river, and using the ferry heretofore referred to between Little Rock Island and west shore of the Mississippi river; extended, constructed and completed the bridge across the west channel of the Mississippi river from Little Rock Island to the west bank of said river, and laid railroad tracks thereon, connecting the rails with the rails already laid on the west end of said bridge, and also with the rails on the west bank of said river which had been laid by the Chicago, Iowa and Nebraska Railroad Company, claiming the right so to do under the said contracts of lease as heretofore referred to, and from that time on the Chicago and North-Western Railway Company has continuously run its locomotives and cars from the city of Chicago over and across said bridge to points in Iowa, and transported passengers and freight thereon.

The said bridge across the Mississippi river at Clinton was made a postal route by act of Congress approved February 27, 1867.

On the 10th day of December, 1869, the Chicago, Iowa and Nebraska Railroad Company made a new contract with the Chicago and North-Western Railroad Company, and therein renewed the contract of lease made by the Chicago, Iowa and Nebraska Railroad Company to the Galena and Chicago Union Railroad Company dated July 3, 1862, and embraced in said new lease the railroad bridge and ferry, extending from the east bank of the Mississippi river to the city of Cedar Rapids, and therein changed the amount to be paid as rent and made some other modifications as to the covenants in the original lease. And on the first day of December, 1865, the Cedar Rapids and Missouri River Railroad Company made a new contract with the Chicago and North-Western Railway Company, and therein renewed the contract of lease of July 8, 1862, made by the Cedar Rapids and Missouri River Railroad Company to the Galena and Chicago Union Railroad Company, changing the amount of rental and certain covenants in the original contract of lease. And thereafter the Chicago and North-Western Railway Company extended and completed the line from Cedar Rapids to Council Bluffs on the Missouri river. And said company, acting as lessee under said contract of lease, used and operated the lines of railroad embraced in said contracts of lease, from the east bank of the Mississippi river, where the tracks were connected with the Chicago and North-Western Railway Company's tracks, over and across said bridge and to points in the State of Iowa, and as soon as completed, to Council Bluffs, aforesaid, and continued so to do until the making of the deeds hereinafter mentioned:

Between the years 1869 and 1884, the Chicago and North-Western Railway Company took control under contracts purporting to be leases of the following railroads in Iowa, all of which were connected with the Chicago, Iowa and Nebraska railroad, or with the Cedar Rapids and Missouri River railroad to wit: the Maple River railroad, the Stanwood and Tipton railroad, the Des Moines and Minneapolis railroad, the Iowa Midland railroad and the Ottumwa, Cedar Falls and St. Paul railroad, and acting under said contracts, the Chicago and North-Western Railway Company operated the same up to the time of the making of the deeds therefor in the year 1884.

On the 30th day of November, 1872, the Chicago and North-Western Railroad Company executed a mortgage to the Union Trust Company, of New York, to secure the sum of $18,749,500, upon bonds issued by said company, and conveyed therein among other railroad properties all the right, title and interest of the Chicago and North-Western Railway Company in and to the Chicago, Iowa and Nebraska Railroad Company and the Cedar Rapids and Missouri River Railroad Company, extending from the east bank of the Mississippi river, opposite Clinton, to Council Bluffs, in the State of Iowa, including the bridge across the Mississippi river, at Clinton, with a branch railroad from Clinton to Lyons, which were claimed and held by the said Chicago and North-Western Railway Company under said contracts of lease, in perpetuity to the said Chicago and North-Western Railway Company. That said bonds were issued and sold and are still outstanding, and the mortgage constitutes a lien on said property therein described as security for the payment of the bonds.

That the legislature of the State of Illinois, on the 12th day of February, 1855, passed an act which reads as follows:

"SECTION 1. All railroad companies incorporated or organized under, or which may be incorporated or organized under the authority of the laws of this state, shall have power to make such contracts and arrangements with each other, and with railroad companies of other states, for leasing or running their roads or any part thereof, and also to contract for and hold in fee simple or otherwise, lands or buildings in this or other states, for depot purposes; and also to purchase and hold such personal property as shall be necessary and convenient for carrying into effect the object of this act.

SEC. 2. All railroad companies incorporated or organized under, or which may be incorporated or organized as aforesaid, shall have the right of connecting with each other and with the railroads of other states, on such terms as shall be mutually agreed upon by the companies interested in such connection."

And afterwards, on the 30th day of March, 1875, the legislature

of the State of Illinois passed an act entitled, "An act relating to leases in this state, of railroads in adjoining states," which reads as follows:

"SECTION 1. That all railroad companies incorporated or organized, or which may be incorporated or organized under the laws of this state, or of this and any adjoining state, which now are, or at any time hereafter may be, in possession of and operating connecting railroads in states adjoining this state under lease in perpetuity or for a period of not less than twenty years, shall have power to purchase the remaining interests, property and franchises of the lessors of such railroads situated in such adjoining states, on such terms and conditions as may be agreed upon by the parties, or their assigns, to such leases. Provided that nothing in this act shall be so construed as to authorize any corporation acting by or organized under the laws of any other state to purchase or otherwise become the owners of any railroad in this state."

The legislature of the State of Iowa passed an act, which was approved January 25, 1855, and went into effect February 1, 1855, which provided, among other things, as follows:

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That any railroad company heretofore organized, or that may hereafter organize under the laws of this state, shall have the power to intersect, join and unite their railroads constructed or to be constructed in this state, or in any adjoining state, at such point on the state line, or at any other point as may be mutually agreed upon by said companies. And such railroads are authorized to merge and consolidate the stock of the respective companies, making one joint stock company of the railroads thus connected, upon such terms as may be by them mutually agreed upon, and in accordance with the laws of the adjoining state with whose road or roads connections are thus formed; *provided*, that the consent of three-fourths of all the stockholders in amount in any road whose stock is proposed to be consolidated shall so consent.

SEC. 2. Any railroad company heretofore, or which may hereafter be organized under the laws of this state for the purpose of constructing a railroad from any point in this state to the boundary line thereof, is hereby empowered to extend said railroad into or through any other state or states, under such regulations as may be prescribed by the laws of such state or states, or through which said road may be so extended; and the rights and privileges of said company over said extension in the construction and use of said railroads for the benefit of such company in controlling and applying the assets of said company, shall be the same as if their railroad had been constructed wholly within the state.

SEC. 3. That any railroad company heretofore organized or

which may be hereafter organized under the laws of the state, and which may have constructed or commenced the construction of their road so as to meet and connect with any other railroad in an adjoining state at the boundary line of this state, shall have the power to make such contracts and agreements with any such roads constructed in an adjoining state for the transportation of freight and passengers, or for the use of its said road, as the board of directors may deem proper.

And the State of Iowa passed an act, which was approved March 28, 1864, and went into effect on the 10th day of April, 1864, which provided among other things, as follows:

"SEC. 4. The board of directors of any railroad company shall have power to authorize contracts of lease, or joint running arrangements with any connecting road, for the operation of such connection, upon such reasonable and just terms as may be agreed upon by the parties, and the party thus leasing or operating a railroad of another company shall in all respects be liable to the public for their acts or negligence, in the same manner as though the road belonged to them.

"SEC. 5. This act shall apply to all contracts and leases heretofore made, as well as to be made hereafter."

And the legislature of Iowa passed another act which was approved on the 3d day of April, 1868, and which went into effect on the 8th day of the same month, by which it was enacted as follows:

"SECTION 1. All companies, lessees or corporations hereafter running, or operating any railroad within this state, shall be liable for injuring, destroying or killing any livestock the same as railroad companies now are, and all the provisions of Chapter 169 of the acts of the Ninth General Assembly, which apply to the putting in of cattle-guards, the fencing of the road, the injuring, destroying or killing of livestock, the neglect of agents or employes, shall be held to apply to such companies, lessees or corporations, as though they were specially named therein, and parties suffering injuries from the running and operation of such roads by such parties, shall have all the remedies prescribed in said chapter as fully as they now have against the railroad company."

And that the legislature of the State of Iowa enacted a code in 1873, which went into effect on the 1st day of September, 1873, in which sections 1,275, 1,276, 1,300 and 1,301 are as follows:

"SEC. 1,275. Any such corporation may join, intersect and unite its railway with the railway of any other corporation at such point on the boundary line of this state as may be agreed upon by such corporations. And with the assent of three-fourths in interest of all the stockholders, may, by purchase or sale or otherwise,

merge and consolidate the stock, property, franchises and liabilities of such corporations, making the same one joint stock corporation upon such terms as may be agreed upon, not in conflict with the laws of this state.

"SEC. 1,276. Any such corporation which has or may construct its railway so as to meet or connect with any other railway in an adjoining state at the boundary line of this state, shall have power to make such contracts and agreements with the corporations controlling such railways in an adjoining state for the transportation of passengers, or for the use of its railway by such foreign corporation, as the board of directors may see proper.

"SEC. 1,300. Any such corporation may sell or lease its railway, property and franchises to, or make joint running arrangements with any corporations owning or operating any connecting railway, and the corporation operating the railway of another shall in all respects be liable in the same manner and extent as though such railway belonged to it, subject to the laws of this state.

"SEC. 1,301. Any contract, lease or benefit derived therefrom, contemplated in either of the three preceding sections may be mortgaged for the purpose of securing construction bonds in the same manner as other property of the corporation."

On the 1st day of July, 1884, the Chicago, Iowa and Nebraska Railroad Company executed a deed to the Chicago and North-Western Railway Company purporting to sell and convey for and in consideration of 58,743 shares of the common capital stock of the grantee and other good and valuable considerations, all of the remaining right, title and interest, after execution and delivery of the lease aforesaid, in its entire line of railway, including its interest in the bridge and tracks across the Mississippi river, and all cars, engines and property real and personal of every description; and on the 2d day of July, 1884, a similar deed was executed by the Cedar Rapids and Missouri River Railroad Company to the Chicago and North-Western Railway Company, purporting to sell and convey for the consideration of 68,504 shares of the common capital stock of the grantee and the guaranty of the payment of bonds bearing seven per cent. interest to the aggregate of $4,383,000, all of its remaining right, title and interest after the leases aforesaid, the entire line of railroad from Cedar Rapids to Council Bluffs, and all property of every kind connected therewith.

In the month of July, 1884, similar deeds were made by the several railroad corporations hereinbefore mentioned as having contracts of lease with the Chicago and North-Western Railway Company, whereby the several Iowa railway companies undertook to convey all title and interest in the heretofore described property to the Chi-

cago and North-Western Railway Company. Each of said deeds was made upon good consideration named therein, and were recorded during the year 1884 in the several counties in Iowa in which said several roads are located.

Since the making of the said several deeds all of the railroad tracks constructed by the several corporations in the State of Iowa, and embraced in said conveyances, have been connected with each other, and with the Chicago and North-Western Railway Company's tracks originally laid by the Galena and Chicago Union Railroad Company at the east end of the bridge across the Mississippi river at Clinton, and the same have been used and operated by the Chicago and North-Western Railway Company as connected tracks of said company, and trains of locomotives and cars have been made up in the State of Illinois and run into the State of Iowa, and also made up in the State of Iowa and run into the State of Illinois, and said Chicago and North-Western Railway Company has, in the operation of said railroads, been engaged in the business of a common carrier, and in transporting passengers and freight from points in the State of Illinois to points in the State of Iowa, and from points in the State of Iowa to points in the State of Illinois, and also transporting passengers who had purchased tickets from points in Illinois, Wisconsin, Michigan, Indiana and other states east of the same to points in the State of Iowa, and to points in states west of Iowa, and also in carrying freight shipped from points in the States of Illinois, Wisconsin, Michigan, Indiana and other states east of the same to points in the State of Iowa, and to points in states west of Iowa, and also at the same time has been engaged in receiving and carrying passengers and freight from points within the State of Iowa to other points within the same state, and generally has been engaged in commerce among the several states, as well as in commerce within the State of Iowa. The Chicago and North-Western Railway Company has also upon all of said lines been engaged in carrying the mails of the United States.

The petitioner, Henry Barron, at the time he was arrested, was in the employment of the Chicago and North-Western Railway Company, and engaged as an engineer on a locomotive in running a passenger train, which was made up at Chicago, in the State of Illinois, and was destined to Council Bluffs, in Iowa, and that said train was carrying passengers and the United States mails received at different points in the State of Illinois and destined to points in the State of Iowa and beyond, and also from points in the State of Iowa to other points in the same state. While the said Henry Barron was so engaged as an engineer in running said train, and was passing through the County of Linn, in Iowa, he was arrested by the sheriff of said county at the city of Cedar Rapids, charged

with a violation of chapter 76 of the Laws of the 21st General Assembly of the State of Iowa, a copy of which is attached to the petition in this case, and that he was brought before C. W. Burton, a justice of the peace of said county, to answer to an information there filed against him, a copy of which is attached to the petition herein, marked "Exhibit B." That said arrest was made by the sheriff under the authority of a warrant, a copy of which is attached to the petition as "Exhibit C." That said Henry Barron, as engineeer aforesaid, was controlling the engine on said train from Clinton to Boone.

And the legislature of the State of Iowa passed an act entitled: "An act to enable Townships, Incorporated Towns and Cities to aid in the Construction of Railroads," approved April 12, 1870, and which went into effect April 17, 1870, the fourth section of which act is as follows:

"SEC. 4. All railroads constructed by or with the aid of any taxes levied and collected under the provisions of this act shall be subject to the control of the General Assembly in regard to the management of the same and the charges for the transportation of freight and passengers thereon."

And the legislature of the State of Iowa passed an act entitled an "Act to enable Townships and Incorporated Towns and Cities to aid in the Construction of Railroads," approved March 13, 1876, which went into effect March 31, 1876, section nine of which act provided as follows:

"SEC. 9. All railroads in this state constructed by or with the aid of any taxes levied and collected under the provisions of this act shall be subject to the control of the General Assembly thereof, in regard to the management of the same and the charges for the transportation of freights and passengers thereon."

The Wall Lake and Sauk City branches, and a part of the Maple River railroad received local aid in the way of a forced taxation of the property of the several townships through which they were constructed, which tax was voted under the several laws of Iowa authorizing the same, and the aid was accepted by the road on the conditions contained in said several leases.

Each of the corporations aforesaid which constructed railroads in the State of Iowa exercised the right of eminent domain in procuring right of way when it was necessary to do so and they were unable to obtain the same by agreement.

And the legislature of the State of Iowa passed an act approved July 14, 1856, the fourteenth section of which said act is as follows:

"SEC. 14. Said railroad companies accepting the provisions of this act shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General

Assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant."

Under an act of the General Assembly of Iowa, approved July 14, 1856, the Iowa Central Air Line Railway Company accepted a grant of lands as in said act provided, and on the day of , 18 , said company filed in the office of the secretary of state, by authority of its board of directors, its acceptance in writing. And thereafter, and by reason of the failure on the part of the Iowa Central Air Line Railway Company to comply with the terms of said grant, as mentioned in said act of the General Assembly of Iowa, and the said grant having been resumed by the legislature by act of the General Assembly, there was granted to the Cedar Rapids and Missouri River Railroad Company all such lands as had been included in the grant to the Iowa Central Air Line Railway Company by an act of the General Assembly of the State of Iowa, approved March 25, 1860, and that said grant was accepted by the Cedar Rapids and Missouri River Railroad Company, which, on the 19th day of June, 1860, filed in the office of the secretary of state its acceptance in writing.

The Maple River Railroad Company, hereinbefore referred to, was incorporated under the laws of Iowa, June 10, 1876. The articles of incorporation were amended June 9, 1879, and were amended a second time on the 17th day of May, 1882. The Des Moines and Minneapolis Railroad Company, before referred to, was incorporated under the laws of Iowa in August 1, 1870, and amended July 5, 1877. The said Ottumwa, Cedar Rapids and St. Paul Railroad Company was incorporated under the laws of Iowa, July 2, 1883, and the articles of incorporation were amended December 18, 1883.

The Chicago, Iowa and Nebraska Railroad Company was organized January 26, 1856. The Cedar Rapids and Missouri River Railroad Company was organized June 14, 1859. The Iowa Midland was organized March 2, 1870.

And section 1,090 of the code of the State of Iowa, referred to above, is as follows:

"SEC. 1090. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be, at any time, altered, abridged or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld or be subject to conditions imposed upon the enjoyment thereof whenever the General Assembly shall deem necessary for the public good."

The articles of incorporation and amendments thereto herein re-

ferred to have been filed in the office of the secretary of state of Iowa.

And the code of the State of Iowa, referred to, contains a section number 2,611, which section is as follows:

"Sec. 2611. If the action is against any corporation or person owning or operating any railway, telegraph line, canal, stages, coaches or cars, or any express company, service may be made upon any general agent of such corporation or person wherever found, or upon any station, ticket or other agent of such corporation or person transacting the business thereof in the county where the suit is brought; if there is no such agent in said county, then service may be had upon an agent thereof transacting said business in any other county."

It is admitted by the respondents that the Chicago and North-Western Railway Company paid the consideration named in the deeds to them, hereinbefore referred to, and that the amount therein named and the manner of paying the same is correct, as therein stated.

The Chicago and Norlh-Western Railway Company has not complied with chapter 76 of the laws of the twenty-first General Assembly of the State of Iowa by taking out a permit, as therein required.

Wherefore, your petitioner says that his arrest, restraint and imprisonment is illegal, and he prays that a writ of habeas corpus may be issued, and that he have judgment discharging him from such arrest, restraint and imprisonment.

Henry S. Barrows

EXHIBIT A.

An act requiring foreign corporations to file their articles of incorporation with the secretary of state and imposing certain conditions upon such corporations taansacting business in this state.

"*Be it enacted by the General Assembly of the State of Iowa:*

"SECTION 1. That hereafter any corporation for pecuniary profit other than for carrying on mercantile or manufacturing business, organized under the laws of any other state or of any territory of the United States, or of any foreign country desiring to transact its business or to continue the transaction of its business in this state, shall be and hereby is required, on and after September (first), A. D. 1886, to file with the secretary of state a certified copy of its articles of incorporation, duly attested, accompanied by a resolution of its board of directors or stockholders, authorizing the filing thereof, and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting

its business, and requesting the issuance to such corporation of a permit to transact business in this state. Said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the secretary of state shall issue to such corporation a permit in such form as he may prescribe for the general transaction of the business of such corporation. And upon the receipt of such permit, such corporation shall be permitted and authorized to conduct and carry on its business in this state. Provided, that nothing in this act contained shall be construed to prevent any foreign corporation from buying, selling, or otherwise dealing in notes, bonds, mortgages and other securities, or from enforcing the collection of the same in the federal courts, in the same manner and to the same extent as is now authorized by law.

"SEC. 2. No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized to exercise the powers of eminent domain, or exercise any of the rights and privileges conferred upon corporations, until they have so complied herewith and taken out such permit.

"SEC. 3. Any foreign corporation sued or impleaded in any of the courts of this state, upon any contract made or executed in this state, or to be performed in this state, or for any act or omission, public or private, arising, originating or happening in the state, who shall remove any such cause from such state court into any of the federal courts held or sitting in this state, for the cause that such corporation is a non-resident of this state, or a resident of another state than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued, or authority granted to such corporation to transact business in this state; such forfeiture to be determined by the record of removal, and to date from filing of the application on which such removal is effected; and whenever any corporation shall thus forfeit its said permit, no new permit shall be issued to it for the space of three months, unless the executive council shall for satisfactory reasons cause it to be issued sooner.

"SEC. 4. Any foreign corporation that shall carry o nits business and transact the same on and after September 1, 1886, in the State of Iowa, by its officers, agents, or otherwise, without having complied with this statute, and taken out and having a valid permit, shall forfeit and pay to the state for each and every day in which such business is transacted and carried on, the sum of one hundred dollars ($100), to be recovered by suit in any court having our jurisdiction. And any agent, officer, or employe, who shall knowingly act or transact such business for such corporation when it has no valid permit, as provided herein, shall be guilty of a misdemeanor,

and for each offense shall be fined, not to exceed one hundred dollars ($100), or imprisonment in the county jail, not to exceed thirty days, and pay all costs of prosecution.

"SEC. 5. All acts and parts of acts inconsistent with the provisions hereof are hereby repealed, provided that nothing contained in this act shall relieve any company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon them or required of them, or either of them, by the laws now in force."

Approved April 6, 1886.

EXHIBIT B.

STATE OF IOWA, } ss.
LINN COUNTY. }

Before C. W. BURTON, justice of the peace in and for Rapids township.

The State of Iowa }
v. }
Henry Barron. }

The defendant is accused of the crime of knowingly transacting a portion of the business of the Chicago and North-Western Railway Company within the State of Iowa, when such railway company has no valid permit to do business in the State of Iowa, as provided in chapter 76 of the laws of the twenty-first General Assembly of said State of Iowa, and taking effect September 1, 1886.

For that the said defendant on the 5th day of October, 1886, at the city of Cedar Rapids, in the county and state aforesaid, well knowing the Chicago and North-Western Railway Company to be a foreign corporation, organized under the laws of Iowa, and well knowing that the said Chicago and North-Western Railway Company was such foreign corporation for pecuniary profit other than for carrying on mercantile or manufacturing business, to wit: for the operating of a line of railroad, and well knowing that said railway company has failed, neglected and refused to file its articles of incorporation with the secretary of state of the State of Iowa, and has neglected and refused to request the issuance to such Chicago and North-Western Railway Company of a permit to transact business in said State of Iowa; and well knowing that said railway company has no permit to do business in said State of Iowa, as required by said chapter 76 of the laws of Iowa, passed by the the twenty-first General Assembly aforesaid; did knowingly, act as a locomotive engineer for the transaction of the business of said Chicago and North-

Western Railway Company within the State of Iowa by running a locomotive engine with a passenger train attached thereto through the township of Rapids in the county and state aforesaid, contrary to law and the statute in such case made and provided.

(Signed) J. H. PRESTON.

Subscribed and sworn to by J. H. Preston, before me this 5th day of October, A. D. 1886.

(Signed) E. C. PRESTON,
Notary Public in and for Linn County, Iowa.

(Notarial Seal.)

EXHIBIT C.

STATE OF IOWA, }
LINN COUNTY, } ss.

To George W. Burnside, Sheriff of Linn county, Iowa, greeting:

Information on oath having been this day laid before me that the crime of knowingly transacting a portion of the business of the Chicago and Northwestern Railway Company within the State of Iowa, when such railway company had no valid permit to do business in the State of Iowa, as provided by chapter 76 of the laws of the twenty-first General Assembly, of the State of Iowa, approved April 6th, 1886, and taking effect September 1st, 1886, has been committed, and accusing Henry Barron thereof:

You are, therefore, in the name of the State of Iowa, commanded forthwith to arrest the said Henry Barron and bring him before me at my office in Rapids township in said county, to be dealt with as provided by law.

Witness my hand this 5th day of October, 1886.

C. W. BURTON,
Justice of the Peace.

(affidavit)

Western Railway Company within the State of Iowa by running a locomotive engine with a passenger train attached thereto through the township of Rapids in the county and state aforesaid, contrary to law and the statute in such case made and provided.

(Signed) J. H. PRESTON.

Subscribed and sworn to by J. H. Preston, before me this 5th day of October, A. D. 1886.

(Signed) E. C. PRESTON,
Notary Public in and for Linn County, Iowa.

(Notarial Seal.)

EXHIBIT C.

STATE OF IOWA, } ss.
LINN COUNTY, }

To George W. Burnside, Sheriff of Linn county, Iowa, greeting:

Information on oath having been this day laid before me that the crime of knowingly transacting a portion of the business of the Chicago and Northwestern Railway Company within the State of Iowa, when such railway company had no valid permit to do business in the State of Iowa, as provided by chapter 70 of the laws of the twenty-first General Assembly, of the State of Iowa, approved April 9th, 1886, and taking effect September 1st, 1886, has been committed, and accusing Henry Barron thereof:

You are, therefore, in the name of the State of Iowa, commanded forthwith to arrest the said Henry Barron and bring him before me at my office in Rapids township, in said county, to be dealt with as provided by law.

Witness my hand this 5th day of October, 1886.

C. W. BURTON,
Justice of the Peace.

(Affidavit)

121-186

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1335.

HENRY S. BARRON, PLAINTIFF IN ERROR,

vs.

GEO. W. BURNSIDE, SHERIFF OF LINN COUNTY, IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR.

W. C. GOUDY,
FOR PETITIONER.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 1335.

HENRY S. BARRON, PLAINTIFF IN ERROR,

vs.

GEO. W. BURNSIDE, SHERIFF OF LINN COUNTY, IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

ARGUMENT FOR PLAINTIFF IN ERROR.

STATEMENT.

On the 6th day of April, 1886, the legislature of Iowa passed the following statute:

"An act requiring foreign corporations to file their articles "of incorporation with the secretary of state and imposing cer- "tain conditions upon such corporations transacting business in "this state.

"*Be it enacted by the General Assembly of the State of Iowa:*

"SECTION 1. That hereafter any corporation for pecuniary "profit other than for carrying on mercantile or manufacturing "business, organized under the laws of any other state or of

"any territory of the United States, or of any foreign country "desiring to transact its business or to continue the transaction "of its business in this state, shall be and hereby is required, on "and after September (first), A. D. 1886, to file with the sec- "retary of state a certified copy of its articles of incorporation, "duly attested, accompanied by a resolution of its board of "directors or stockholders, authorizing the filing thereof, and "also authorizing service of process to be made upon any of its "officers or agents in this state engaged in transacting its "business, and requesting the issuance to such corporation of a "permit to transact business in this state. Said application to "contain a stipulation that said permit shall be subject to each "of the provisions of this act. And thereupon the secretary of "state shall issue to such corporation a permit in such form as "he may prescribe, for the general transaction of the business "of such corporation. And upon the receipt of such permit, "such corporation shall be permitted and authorized to conduct "and carry on its business in this state. Provided, that nothing "in this act contained shall be construed to prevent any foreign "corporation from buying, selling or otherwise dealing in notes, "bonds, mortgages and other securities, or from enforcing the "collection of the same in the federal courts, in the same man- "ner and to the same extent as is now authorized by law.

"SEC. 2. No foreign corporation which has not in good "faith complied with the provisions of this act, and taken out a "permit, shall hereafter be authorized to exercise the powers of "eminent domain, or exercise any of the rights and privileges "conferred upon corporations, until they have so complied here- "with and taken out such permit.

"SEC. 3. Any foreign corporation sued or impleaded in any "of the courts of this state, upon any contract made or executed "in this state, or to be performed in this state, or for any act or "omission, public or private, arising, originating or happening

"in the state, who shall remove any such cause from such state "court into any of the federal courts held or sitting in this state, "for the cause that such corporation is a non-resident of this "state, or a resident of another state than that of the adverse "party, or of local prejudice against such corporation, shall "thereupon forfeit and render null and void any permit issued, "or authority granted to such corporation to transact business "in this state; such forfeiture to be determined by the record "of removal, and to date from filing of the application on which "such removal is effected; and whenever any corporation shall "thus forfeit its said permit, no new permit shall be issued to "it for the space of three months, unless the executive council "shall, for satisfactory reasons, cause it to be issued sooner.

"SEC. 4. Any foreign corporation that shall carry on its "business and transact the same on and after September 1, "1886, in the State of Iowa, by its officers, agents or otherwise, "without having complied with this statute, and taken out and "having a valid permit, shall forfeit and pay to the state for "each and every day in which such business is transacted and "carried on, the sum of one hundred dollars ($100), to be "recovered by suit in any court having jurisdiction. And "any agent, officer or employe, who shall knowingly act or "transact such business for such corporation when it has no "valid permit, as provided herein, shall be guilty of a misde- "meanor, and for each offense shall be fined not to exceed one "hundred dollars ($100), or imprisonment in the county jail, "not to exceed thirty days, and pay all costs of prosecution.

"SEC. 5. All acts and parts of acts inconsistent with the "provisions hereof are hereby repealed, provided that nothing "contained in this act shall relieve any company, corporation, "association or partnership from the performance of any duty "or obligation now enjoined upon them or required of them, or "either of them, by the laws now in force."

Approved April 6, 1886. (Printed Record, 7.)

It is claimed that this act is repugnant to the constitution of the United States, and therefore void.

1. To section 10, article I, which provides that no state shall pass any law impairing the obligation of contracts.

2. To section 8, article I, which provides that Congress shall have power to regulate commerce with foreign nations and among the several states.

3. To the fourteenth amendment, which provides that no state shall deprive any person of property without due process of law.

4. To section 2, article III, which provides that the judicial power of the United States shall extend to all controversies between a state and citizens of another state, or between citizens of different states; and to the acts of Congress passed in pursuance thereof.

Henry Barron, a citizen and resident of the State of Iowa, was arrested on the 5th day of October, 1886, at Cedar Rapids, Linn county, Iowa, upon a complaint, before a justice of the peace, that he did, knowingly, act as a locomotive engineer for the transaction of the business of the Chicago and North-Western Railway Company, within the State of Iowa, by running a locomotive engine with a passenger train attached thereto; the said railway company not having a valid permit to do business in the State of Iowa as provided in chapter 26 the laws of the first General Assembly of the State of Iowa, approved April 6, 1886, and taking effect September 1, 1886.

On the 6th day of October, 1886, Henry Barron presented to the Supreme court of Iowa a petition for a writ of *habeas corpus*, alleging that he was in the custody of George W. Burnside, sheriff of Linn county, Iowa, for the alleged violation of said statute. (Pr. Rec., 1.)

The court ordered the writ to be issued, and on the 10th day of April, 1886, the writ with a return was filed. (Pr. Rec., 11.)

On the 9th day of December, 1886, a stipulation as to the facts not admitted by the return was filed. (Pr. Rec., 15.)

On the 10th day of December, 1886, the case was submitted on the petition, return, stipulation and argument; and on the 15th day of December the Supreme court of Iowa rendered a decision remanding the petitioner to the custody of the sheriff. (Pr. Rec., 31.)

On entering the judgment, the court filed an opinion which, after stating the case presented, reads as follows:

"It is insisted by counsel for the petitioners that said chapter seventy-six is unconstitutional and void, because (I) it 'is repugnant to section ten, article one, of the Constitution of the United States, and section twenty-one, article one, of the Constitution of Iowa, which provides that no law shall be passed impairing the obligation of contracts.'

"II. Said 'statute is contrary to section eight of article one of the United States Constitution, which provides that Congress shall have power to regulate commerce with foreign nations and among the several states.'

"III. Said 'statute is repugnant to the Fourteenth Amendment to the Constitution of the United States, and therefore void.'

"IV. Said statute 'is void as an attempt to interfere with the jurisdiction of the Federal courts, as established by the Constitution of the United States and the acts of Congress.'

"These several propositions have been exhaustively argued by counsel, and in relation thereto we desire to say that their solution presents grave difficulties. As to all the propositions but one, this court is not the final arbiter, and therefore,

"believing, as some of us do, that it is doubtful what construc-
"tion of the Constitution of the United States and the acts of
"Congress should be adopted, under the agreed statement of
"facts we feel constrained to hold that the statute above men-
"tioned is not in conflict with the Constitution of the United
"States or acts of Congress passed in pursuance thereof, to
"the end that the questions presented may be determined by
"the Supreme court of the United States. The petitioners
"will therefore be remanded to the custody of the defendants,
"and such judgment will be accordingly entered.'" (Pr. Rec., 30.)

From the judgment of the Supreme court of Iowa, Henry Barron prosecuted a writ of error to this court, and citation has been issued and served. (Pr. Rec., 32.)

The facts shown by the record, and the statutes of Iowa and Illinois necessary to a decision of the case, are as follows:

On the 16th day of August, 1836, the Galena and Chicago Union Railroad Company was organized under a special act of the legislature of the State of Illinois as a corporate body, which act of incorporation was subsequently amended on the 4th day of March, 1837, the 24th day of February, 1847, and the 25th day of February, 1854, as will more fully appear by reference to the several acts as printed in the laws of Illinois; and that by said acts the said company was authorized to construct and operate, among others, a railroad from the city of Chicago to the east bank of the Mississippi river, opposite Clinton, in the State of Iowa, and that under said authority said company constructed a railroad from the city of Chicago to Fulton, on the Mississippi river, and opened the line for business on the 10th day of December, 1855, and that the track was extended from the terminus at Fulton, a distance of one and three-fourths miles, to the end of a bridge across the

Mississippi river, from the east shore thereof, to Little Rock island, an island in said river, during the year 1859.

The Albany Bridge Company was organized by an act of the legislature of the State of Illinois, approved February 14, 1857, to which reference is made, and was authorized to construct and operate a bridge across the Mississippi river at Clinton, Iowa, and during the year 1859 the said company constructed a bridge from a point on the east bank of the Mississippi river, opposite Clinton and in the State of Illinois, a distance of 2,800 feet to, and upon an island known as Little Rock island. The whole of said Little Rock island being in the State of Illinois, and also laid railroad tracks on said bridge, and other tracks on Little Rock island, leaving a channel west of the island, a distance of about 800 feet, without any bridge over the same. The center of said channel west of said island being the dividing line between the States of Illinois and Iowa, and the said tracks and the rails of said tracks on said bridge were connected with the rails of the tracks of the Galena and Chicago Union Railroad Company at the east end of said bridge, so that locomotives and cars were run from the tracks of said railroad company to and upon the tracks of the bridge company, to the terminus thereof on Little Rock island.

Prior to June 18, 1860, the Iowa Land Company, a corporation under the laws of the State of Iowa, was the owner of a certain ferry franchise, with the right to run a ferry across the Mississippi river from Clinton, and of certain boats then and there run by them for the transportation of property and persons across the river. And on that day the said land company entered into a contract, purporting to lease to the Chicago, Iowa and Nebraska Railroad Company, a corporation existing under the laws of the State of Iowa, and at that time operating a railroad from the west bank of the Mississippi

river to Cedar Rapids, the ferry-boat Commodore, with all rights and privileges of the franchise so far as running a ferry between Clinton and the island or Illinois shore was concerned, for a term of six years from July 1, 1860, which lease was, on the 26th day of June, 1862, extended so that the term was to run until the bridge should be constructed from Little Rock island to Clinton.

On the 26th day of June, 1862, the Albany Bridge Company entered into a contract, purporting to lease to the Chicago, Iowa and Nebraska Railroad Company the railroad bridge and tracks thereon, and all tracks connected therewith on Little Rock Island, and all the franchises, rights and privileges belonging to said company in perpetuity.

On the 3d day of July, 1862, the Chicago, Iowa and Nebraska Railroad Company entered into a contract, purporting to be a perpetual lease of its lines of railroad in Iowa to the Galena and Chicago Union Railroad Company, extending from Clinton to Cedar Rapids, and including the tracks on Little Rock Island, also all ferry-boats and all rights to ferry at Clinton, also the railroad bridge from the Illinois shore to Little Rock Island, and all the rights, privileges and franchises in and to the bridge and ferry, and the said line of railroad, in so far as it was competent for the said Chicago, Iowa and Nebraska Railroad Company to make such lease.

On the 8th day of July, 1862, the Cedar Rapids and Missouri River Railroad Company, a corporation existing under the laws of the State of Iowa, owning and operating a railroad westward from Cedar Rapids, where its rails and tracks were connected with the rails and tracks of the Chicago, Iowa and Nebraska Railroad Company, entered into a contract, purporting to be a perpetual lease to the Galena and Chicago Union Railroad Company of its line of railway, and all property connected therewith.

From and after the 1st day of February, 1860, the bridge and tracks thereon, together with the ferry over the west channel of the Mississippi river, were used by the Galena and Chicago Union Railroad Company and the Chicago, Iowa and Nebraska Railroad Company, for the transportation of freight and passengers from Chicago to Cedar Rapids and beyond, as far as the Cedar Rapids and Missouri River Railroad Company's tracks were completed. That in transacting said business, the cars of the Galena and Chicago Union Railroad Company were run on and over the bridge onto Little Rock Island, where the passengers and freight and cars were transferred by the said ferry to the west bank of the river, and thence by the Chicago, Iowa and Nebraska Railroad Company westward over its lines.

On the 7th day of June, 1859, the Chicago and North-Western Railway Company was incorporated under and in pursuance of acts of the legislature of the State of Illinois, and thereby was created a corporate body, and was the owner of certain railroad lines in said state, and on the 2d day of June, 1864, the Galena and Chicago Union Railroad Company was consolidated with the Chicago and North-Western Railway Company under the name of the Chicago and North-Western Railway Company, which has ever since continued to exist as a corporate body and to operate railroads in the States of Illinois, Iowa, Wisconsin, Minnesota, Michigan and elsewhere, and that said consolidation was made in pursuance of the laws of the States of Illinois and Wisconsin.

During the year 1865 the Chicago and North-Western Railway Company, being then the owner of all the rights and property of the Galena and Chicago Union Railroad Company, including whatever rights were acquired by the contract of lease entered into by the Albany Bridge Company to the Chicago, Iowa and Nebraska Railroad Company, and the contract

of lease of the Iowa Land Company to the same railroad company, and the contract of lease of the Chicago, Iowa and Nebraska Railroad Company and of the Iowa Land Company to the same railroad company, and the contract of lease of the Chicago, Iowa and Nebraska Railroad Company and of the Cedar Rapids and Missouri River Railroad Company to the Galena and Chicago Union Railroad Company, and then operating a line of railway from the city of Chicago in Illinois to the east bank of the Mississippi river on Little Rock Island, and from the west bank of the Mississippi river through the State of Iowa to the Missouri river, and using the ferry heretofore referred to between Little Rock Island and west shore of the Mississippi river; extended, constructed and completed the bridge across the west channel of the Mississippi river from Little Rock Island to the west bank of said river, and laid railroad tracks thereon, connecting the rails with the rails already laid on the west end of said bridge, and also with the rails on the west bank of said river which had been laid by the Chicago, Iowa and Nebraska Railroad Company, claiming the right so to do under the said contracts of lease as heretofore referred to, and from that time on the Chicago and North-Western Railway Company has continuously run its locomotives and cars from the city of Chicago over and across said bridge to points in Iowa, and transported passengers and freight thereon.

The said bridge across the Mississippi river at Clinton was made a postal route by act of Congress approved February 27, 1867.

On the 10th day of December, 1869, the Chicago, Iowa and Nebraska Railroad Company made a new contract with the Chicago and North-Western Railroad Company, and therein renewed the contract of lease made by the Chicago, Iowa and Nebraska Railroad Company to the Galena and Chicago

Union Railroad Company dated July 3, 1862, and embraced in said new lease the railroad bridge and ferry, extending from the east bank of the Mississippi river to the city of Cedar Rapids, and therein changed the amount to be paid as rent and made some other modifications as to the covenants in the original lease. And on the first day of December, 1865, the Cedar Rapids and Missouri River Railroad Company made a new contract with the Chicago and North-Western Railway Company, and therein renewed the contract of lease of July 8, 1862, made by the Cedar Rapids and Missouri River Railroad Company to the Galena and Chicago Union Railroad Company, changing the amount of rental and certain covenants in the original contract of lease. And thereafter the Chicago and North-Western Railway Company extended and completed the line from Cedar Rapids to Council Bluffs on the Missouri river. And said company, acting as lessee under said contract of lease, used and operated the lines of railroad embraced in said contracts of lease, from the east bank of the Mississippi river, where the tracks were connected with the Chicago and North-Western Railway Company's tracks, over and across said bridge and to points in the State of Iowa, and, as soon as completed, to Council Bluffs, aforesaid, and continued so to do until the making of the deeds hereinafter mentioned.

Between the years 1869 and 1884, the Chicago and North-Western Railway Company took control under contracts purporting to be leases of the following railroads in Iowa, all of which were connected with the Chicago, Iowa and Nebraska railroad, or with the Cedar Rapids and Missouri River railroad, to wit: the Maple River railroad, the Stanwood and Tipton railroad, the DesMoines and Minneapolis railroad, the Iowa Midland railroad and the Ottumwa, Cedar Falls and St. Paul railroad, and, acting under said contracts, the Chicago and

North-Western Railway Company operated the same up to the time of the making of the deeds therefor in the year 1884.

On the 30th day of November, 1872, the Chicago and North-Western Railroad Company executed a mortgage to the Union Trust Company, of New York, to secure the sum of $18,749,500, upon bonds issued by said company, and conveyed therein, among other railroad properties, all the right, title and interest of the Chicago and North-Western Railway Company in and to the Chicago, Iowa and Nebraska Railroad Company and the Cedar Rapids and Missouri River Railroad Company, extending from the east bank of the Mississippi river, opposite Clinton, to Council Bluffs, in the State of Iowa, including the bridge across the Mississippi river, at Clinton, with a branch railroad from Clinton to Lyons, which were claimed and held by the said Chicago and North-Western Railway Company under said contracts of lease in perpetuity to the said Chicago and North-Western Railway Company. That said bonds were issued and sold and are still outstanding, and the mortgage constitutes a lien on said property therein described as security for the payment of the bonds.

The legislature of the State of Illinois, on the 12th day of February, 1855, passed an act which reads as follows:

"SECTION 1. All railroad companies incorporated or organ-
" ized under, or which may may be incorporated or organized
" under the authority of the laws of this state shall have power
" to make such contracts and arrangements with each other,
" and with railroad companies of other states, for leasing or
" running their roads or any part thereof, and also to contract
" for and hold in fee simple or otherwise lands or buildings in
" this or other states, for depot purposes; and also to purchase
" and hold such personal property as shall be necessary and
" convenient for carrying into effect the object of this act.

"SEC. 2. All railroad companies incorporated or organized "under, or which may be incorporated or organized as afore- "said, shall have the right of connecting with each other and "with the railroads of other states, on such terms as shall be "mutually agreed upon by the companies interested in such "connection."

And afterwards, on the 30th day of March 1875, the legislature of the State of Illinois passed an act entitled, "An act "relating to leases in this state of railroads in adjoining states," which reads as follows:

"SECTION 1. That all railroad companies incorporated or "organized, or which may be incorporated or organized under "the laws of this state, or of this and any adjoining state, which "now are, or at any time hereafter may be, in possession of "and operating connecting railroads in states adjoining this "state under lease in perpetuity or for a period of not less than "twenty years, shall have power to purchase the remaining "interests, property and franchises of the lessors of such rail- "roads situated in such adjoining states, on such terms and con- "ditions as may be agreed upon by the parties, or their as- "signs, to such leases. Provided that nothing in this act shall "be so construed as to authorize any corporation acting by or "organized under the laws of any other state to purchase "or otherwise become the owners of any railroad in this "state."

The legislature of the State of Iowa passed an act which was approved January 25, 1855, and went into effect February 1, 1855, which provided, among other things, as follows:

"SECTION 1. *Be it enacted by the General Assembly of the* "*State of Iowa*, That any railroad company heretofore organ- "ized, or that may hereafter organize under the laws of this "state, shall have the power to intersect, join and unite their

"railroads constructed or to be constructed in this state, or in "any adjoining state, at such point on the state line, or at any "other point, as may be mutually agreed upon by said com- "panies. And such railroads are authorized to merge and con- "solidate the stock of the respective companies, making one "joint stock company of the railroads thus connected, upon "such terms as may be by them mutually agreed upon, and in "accordance with the laws of the adjoining state with whose "road or roads connections are thus formed; *provided*, that "the consent of three-fourths of all the stockholders in amount "in any road whose stock is proposed to be consolidated shall "so consent.

"SEC. 2. Any railroad company heretofore, or which may "hereafter be organized under the laws of this state for the "purpose of constructing a railroad from any point in this state "to the boundary line thereof, is hereby empowered to extend "said railroad into or through any other state or states, under "such regulations as may be prescribed by the laws of such "state or states, or through which said road may be so ex- "tended; and the rights and privileges of said company over "said extension in the construction and use of said railroads for "the benefit of such company in controlling and applying the "assets of said company shall be the same as if their railroad "had been constructed wholly within the state.

"SEC. 3. That any railroad company heretofore organized "or which may be hereafter organized under the laws of the "state, and which may have constructed or commenced the "construction of their road so as to meet and connect with "any other railroad in an adjoining state at the boundary line of "this state, shall have the power to make such contracts and "agreements with any such roads constructed in an adjoining "state for the transportaton of freight and passengers, or for "the use its said road, as the board of directors may deem "proper."

And the State of Iowa passed an act, which was approved March 28, 1864, and went into effect on the 10th day of April, 1864, which provided, among other things, as follows:

"SEC. 4. The board of directors of any railroad company shall have power to authorize contracts of lease or joint running arrangements with any connecting road, for the operation of such connection, upon such reasonable and just terms as may be agreed upon by the parties, and the party thus leasing or operating a railroad of another company shall in all respects be liable to the public for their acts or negligence, in the same manner as though the road belonged to them.

"SEC. 5. This act shall apply to all contracts and leases heretofore made, as well as to be made hereafter."

And the legislature of Iowa passed another act, which was approved on the 3d day of April, 1868, and which went into effect on the 8th day of the same month, by which it was enacted as follows:

"SECTION 1. All companies, lessees or corporations hereafter running or operating any railroad within this state shall "be liable for injuring, destroying or killing any live stock the "same as railroad companies now are, and all the provisions "of chapter 169 of the acts of the ninth general assembly, "which apply to the putting in of cattle-guards, the fencing of "the road, the injuring, destroying or killing of live stock, the "neglect of agents or employes, shall be held to apply to such "companies, lessees or corporations, as though they were "specially named therein, and parties suffering injuries from "the running and operation of such roads by such parties "shall have all the remedies prescribed in said chapter as "fully as they now have against the railroad company."

And that the legislature of the State of Iowa enacted a code

in 1873, which went into effect on the 1st day of September, 1873, in which sections 1,275, 1,276, 1,300 and 1,301 are as follows:

"SEC. 1,275. Any such corporation may join, intersect and "unite its railway with the railway of any other corporation at "such point on the boundary line of this state as may be "agreed upon by such corporations. And with the assent of "three-fourths in interest of all the stockholders, may, by pur- "chase or sale or otherwise, merge and consolidate the stock, "property, franchises and liabilities of such corporations, mak- "ing the same one joint stock corporation, upon such terms "as may be agreed upon, not in conflict with the laws of this "state.

"SEC. 1,276. Any such corporation which has or may con- "struct its railway so as to meet or connect with any other "railway in an adjoining state at the boundary line of this state "shall have power to make such contracts and agreements "with the corporations controlling such railways in an adjoin- "ing state for the transportation of passengers, or for the use "of its railway by such foreign corporation, as the board of "directors may see proper.

"SEC. 1,300. Any such corporation may sell or lease its "railway, property and franchises to, or make joint running "arrangements with any corporations owning or operating "any connecting railway, and the corporation operating the "railway of another shall in all respects be liable in the same "manner and extent as though such railway belonged to it, "subject to the laws of this state.

"SEC. 1,301. Any contract, lease or benefit derived there- "from, contemplated in either of the three preceding sections, "may be mortgaged for the purpose of securing construction "bonds in the same manner as other property of the cor- "poration."

On the 1st day of July, 1884, the Chicago, Iowa and Nebraska Railroad Company executed a deed to the Chicago and North-Western Railway Company, purporting to sell and convey, for and in consideration of 58,743 shares of the common capital stock of the grantee and other good and valuable considerations, all of the remaining right, title and interest, after execution and delivery of the lease aforesaid, in its entire line of railway, including its interest in the bridge and tracks across the Mississippi river, and all cars, engines and property, real and personal, of every description, and on the 2d day of July, 1884, a similar deed was executed by the Cedar Rapids and Missouri River Railroad Company to the Chicago and North-Western Railway Company, purporting to sell and convey, for the consideration of 68,504 shares of the common capital stock of the grantee and the guaranty of the payment of bonds bearing seven per cent. interest to the aggregate of $4,383,000, all of its remaining right, title and interest after the leases aforesaid, the entire line of railroad from Cedar Rapids to Council Bluffs, and all property of every kind connected therewith.

In the month of July, 1884, similar deeds were made by the several railroad corporations hereinbefore mentioned as having contracts of lease with the Chicago and North-Western Railway Company, whereby the several Iowa railway companies undertook to convey all title and interest in the heretofore described property to the Chicago and North-Western Railway Company. Each of said deeds was made upon good consideration named therein, and were recorded during the year 1884 in the several counties in Iowa in which said several roads are located.

Since the making of the said several deeds all of the railroad tracks constructed by the several corporations in the State of Iowa, and embraced in said conveyances, have been connected

with each other, and with the Chicago and North-Western Railway Company's tracks originally laid by the Galena and Chicago Union Railroad Company at the east end of the bridge across the Mississippi river at Clinton, and the same have been used and operated by the Chicago and North-Western Railway Company as connected tracks of said company and trains of locomotives and cars have been made up in the State of Illinois and run into the State of Iowa, and also made up in State of Iowa and run into the State of Illinois, and said Chicago and North-Western Railroad Company has, in the opera- of said railroads been engaged in the business of a common carrier, and in transporting passengers and freight from points in the State of Illinois to points in the State of Iowa, and from points in the State of Iowa to points in the State of Illinois, and also transporting passengers who had purchased tickets from points in Illinois, Wisconsin, Michigan, Indiana and other states east of the same to points in the State of Iowa, and to points in states west of Iowa, and also in carrying freight shipped from points in the States of Illinois, Wisconsin, Michigan, Indiana and other points east of the same to points in the State of Iowa, and to points in states west of Iowa, and also at the same time has been engaged in receiving and carrying passengers and freight from points within the State of Iowa to other points within the same state, and generally has been engaged in commerce amoug the several states, as well as in the State of Iowa. The Chicago and North-Western Railway Company has also upon all of said lines been ingaged in carrying the mails of the United States.

The petitioner, Henry Barron, at the time he was arrested, was in the employment of the Chicago and North-Western Railroad Company, and engaged as an engineer on a locomotive in running a passenger train, which was made up at Chicago, in the State of Illinois, and was destined to Council

Bluffs, in Iowa, and that said train was carrying passengers and the United States mails received at different points in the State of Illinois and destined to points in the State of Iowa and beyond, and also from points in the State of Iowa to other points in the same state. While the said Henry Barron was so engaged as an engineer in running said train, and was passing through the county of Linn, in Iowa, he was arrested by the sheriff of said county at the city of Cedar Rapids, charged with a violation of chapter 76 of the Laws of the 21st general assembly of the State of Iowa, a copy of which is attached to the petition in this case, and he was brought before C. W. Burton, a justice of the peace of said county, to answer to an information there filed against him, a copy of which is attached to the petition, marked "Exhibit B." The arrest was made by the sheriff under the authority of a warrant, a copy of which is attached to the petition as "Exhibit C." Henry Barron, as engineer aforesaid, was controlling the engine on said train from Clifton to Boone.

The legislature of the State of Iowa passed an act entitled: "An act to enable townships, incorporated towns and cities to "aid in the construction of railroads," approved April 12, 1870, which went into effect April 17, 1870, the fourth section of which act is as follows:

"SEC. 4. All railroads constructed by or with the aid of "any taxes levied and collected under the provisions of this "act shall be subject to the control of the general assembly "in regard to the management of the same and the charges for "the transportation of freight and passengers thereon."

The legislature of the State of Iowa passed an act entitled: "An act to enable townships and incorporated towns and cities "to aid in the construction of railroads," approved March 13, 1876, which went into effect March 31, 1876, section nine of which act provided as follows:

"SEC. 9. All railroads in this state constructed by or with "the aid of any taxes levied and collected under the provisions "of this act shall be subject to the general assembly thereof, "in regard to the management of the same and the charges "for the transportation of freight and passengers thereon."

The Wall Lake and Sauk City branches and a part of the Maple River railroad received local aid in the way of a forced taxation of the property of the several townships through which they were constructed, which tax was voted under the several laws of Iowa authorizing the same, and the aid was accepted by the road on the conditions contained in said several leases.

Each of the corporations aforesaid which constructed railroads in the State of Iowa exercised the right of eminent domain in procuring right of way when it was necessary to do so and they were unable to obtain the same by agreement.

The legislature of the State of Iowa passed an act approved July 14, 1856, the fourteenth section of which said act is as follows:

"SEC. 14. Said railroad companies accepting the provisions "of this act shall at all times be subject to such rules and regu- "lations as may from time to time be enacted and provided for "by the General Assembly of Iowa, not inconsistent with the "provisions of this act, and the act of Congress making the grant."

Under an act of the General Assembly of Iowa, approved July 14, 1856, the Iowa Central Air Line Railway Company accepted a grant of lands as in said act provided, and on the day of , 18 , said company filed in the office of the secretary of state, by authority of its board of directors, its acceptance in writing. And thereafter, and by reason of

the failure on the part of the Iowa Central Air Line Railway Company to comply with the terms of said grant, as mentioned in said act of the General Assembly of Iowa, and the said grant having been resumed by the legislature by act of the general assembly, there was granted to the Cedar Rapids and Missouri River Railroad Company all such lands as had been included in the grant to the Iowa Central Air Line Railway Company by an act of the General Assembly of the State of Iowa, approved March 25, 1860, and that said grant was accepted by the Cedar Rapids and Missouri River Railroad Company, which, on the 19th day of June, 1860, filed in the office of the secretary of state its acceptance in writing.

The Maple River Railroad Company, hereinbefore referred to, was incorporated under the laws of Iowa, June 10, 1876. The articles of incorporation were amended June 9, 1879, and were amended a second time on the 17th day of May, 1882. The DesMoines and Minneapolis Railroad Company, before referred to, was incorporated under the laws of Iowa in August 1, 1870, and amended July 5, 1877. The said Ottumwa, Cedar Rapids and St. Paul Railroad Company was incorporated under the laws of Iowa, July 2, 1883, and the articles of incorporation were amended December 18, 1883.

The Chicago, Iowa and Nebraska Railroad Company was organized January 26, 1856. The Cedar Rapids and Missouri River Railroad Company was organized June 14, 1859. The Iowa Midland was organized March 2, 1870.

And section 1,090 of the code of the State of Iowa of 1873 is as follows:

"SEC. 1,090. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to

legislative control, and may be, at any time, altered, abridged or set aside by law, and every franchise obtained, used or enjoyed by such corporation may be regulated, withheld or be subject to conditions imposed upon the enjoyment thereof whenever the general assembly shall deem necessary for the public good."

The articles of incorporation and amendments thereto herein referred to have been filed in the office of the secretary of state of Iowa.

And the code of 1873 of the State of Iowa contains a section number 2,611, which section is as follows:

"SEC. 2,611. If the action is against any corporation or person owning or operating any railway, telegraph line, canal, stages, coaches or cars, or any express company, service may be made upon any general agent of such corporation or person wherever found, or upon any station, ticket or other agent of such corporation or person transacting the business thereof in the county where the suit was brought; if there is no such agent in said county, then service may be had upon an agent thereof transacting said business in any other county."

The Chicago and North-Western Railway Company paid the consideration named in the deeds to them, hereinbefore referred to, and the amount therein named and the manner of paying the same is correct, as therein stated.

The Chicago and North-Western Railway Company has not complied with chapter 76 of the laws of the 21st General Assembly of the State of Iowa by taking out a permit, as therein required.

Errors Assigned.

1. The Supreme court of Iowa erred in deciding that chapter 76 of the laws of the twenty-first General Assembly of the State of Iowa was a valid law.

2. The Supreme court of Iowa erred in refusing to discharge the petitioner and remanding him to custody.

3. The petitioner was not guilty of any offense for which he was liable to arrest and imprisonment, because the statute under which he was arrested is void.

Points of Law.

I.

THE ACT OF THE IOWA LEGISLATURE, APPROVED APRIL 6, 1886, WAS A LAW WHICH IMPAIRED THE OBLIGATION OF A CONTRACT.

The Galena and Chicago Union Railway Company, organized under the laws of Illinois, before 1859, constructed a railroad from Chicago to a point on the Mississippi river, opposite Clinton, Iowa. And the Albany Bridge Company, another Illinois corporation, constructed a bridge from the east bank of the Mississippi river, a distance of 2,800 feet, across Little Rock Island, in the Mississippi river, and a railroad track connecting with the Galena and Chicago Union Railroad Company tracks was laid thereon.

The Chicago, Iowa and Nebraska Railway Company was organized under the general laws of Iowa, January 26, 1856, and built a railroad from the east bank of the Mississippi, at Clinton, to Cedar Rapids. The Cedar Rapids and Missouri River Railroad Company was organized under the general laws of Iowa, June 14, 1859, and built a railroad from Cedar Rapids to the Missouri river, and these two formed a continuous line of railroad from the Mississippi to the Missouri.

Prior to July 1, 1862, the Iowa Land Company, organized under the laws of the State of Iowa, was the owner of a ferry franchise, with the right to run a ferry across the Mississippi from Clinton, and leased the ferry and its franchise to the Chicago, Iowa and Nebraska Railroad Company, and this ferry

was used, among other things, to carry railroad cars across the river. The Albany Bridge Company also leased its franchises and property to the same railroad company. By the use of this ferry and bridge there was a continuous line of railroad from Chicago to Council Bluffs, and the Illinois railway was connected with the Iowa railroad.

The legislature of Iowa passed an act which was approved January 25, 1855, and by the third section thereof, any railroad company which had constructed its road so as to meet and connect with any other railroad within an adjoining state, at the boundary line, should have the power to make such contracts and agreements with any such roads constructed in an adjoining state, for the transportation of freight and passengers, or for the use of its said road, as the board of directors may deem proper. (*Supra.*)

The Legislature of Illinois, on the 12th day of February, 1855, passed an act which authorized all railroad companies, incorporated under the laws of that state, to make such contracts and arrangements with each other and with railroad companies of other states for leasing and running their roads, or any part thereof, and gave power to connect the railroads of the state with each other, and with the railroads of other states, on such terms as might be mutually agreed upon by the companies interested in such connection. (P. Rec., 20.)

On the 3d day of July, 1862, the Chicago, Iowa and Nebraska Railroad Company leased its lines of railroad in Iowa including the tracks on Little Rock Island, and the ferry at Clinton, and the bridge from the Illinois shore to Little Rock Island, to the Galena and Chicago Union Railroad Company. (P. Rec., 17.)

On the 8th day of July, 1862, the Cedar Rapids and Missouri River Railroad Company leased its tracks and property to the Galena and Chicago Union Railroad Company. (*Ibid.*)

On the 7th day of June, 1859, the Chicago and North-Western Railway Company was incorporated under the laws of Illinois. And on the 2d day of June, 1864, the Galena and Chicago Union Railroad Company was consolidated with the Chicago and North-Western Railway Company under the name of the Chicago and North-Western Railway Company. (*Ibid.*)

On the 28th day of March, 1864, the legislature of Iowa passed an act which among other things authorized the board of directors of any railroad company to make contracts of lease or joint running arrangements with any connecting road for the operation of such connection, upon such reasonable and just terms as might be agreed upon by the parties. And it further provided that the act should apply to all contracts and leases made before that time, as well as those to be made thereafter, (Laws of Iowa of 1864, p. 97, *supra.*)

If there was any question as to the power of the Iowa corporations to make the contracts and leases under the Iowa act of 1855, such contracts and leases were confirmed by the act of 1864, and became valid contracts.

The Supreme Court of Iowa in the case of *Treadway* v. *The Chicago and North-Western Railway Company*, 21 Iowa, 351, decided that the statutes of Iowa were to be construed so as to give authority to an Iowa railroad company to lease its road to the Chicago and North-Western Railway Company. It, therefore, appears that the leases of 1862 were valid contracts.

In 1865, the Chicago and North-Western Railway Company, as lessee, completed the bridge from Little Rock Island to the west bank of the Mississippi river at Clinton, and extended the tracks thereon so that a connection of the rails between the Illinois and Iowa roads was made and has continued to exist ever since.

In December, 1869, the Chicago, Iowa and Nebraska Railroad Company made a new contract and lease with the Chicago and North-Western Railway Company, and embraced therein the railroad bridge and ferry extending from the east bank of the Mississippi river to Cedar Rapids, and a new lease was also made by the Cedar Rapids and Missouri River Railway Company to the Chicago and North-Western Railway Company. (P. Rec., 18, 19.)

The legislature of Illinois, on the 30th day of March, 1875, passed an act, the first section of which reads as follows:

"SECTION 1. That all railroad companies incorporated or "organized, or which may be incorporated or organized under "the laws of this state, or of this and any adjoining state, "which now are, or at any time hereafter may be, in possession of and operating connecting railroads in states adjoining "this state under lease in perpetuity, or for a period of not "less than twenty years, shall have power to purchase the "remaining interests, property and franchises of the lessors of "such railroads situated in such adjoining states, on such "terms and conditions as may be agreed upon by the parties, "or their assigns, to such leases. Provided that nothing in "this act shall be so construed as to authorize any corporation "acting by or organized under the laws of any other state to "purchase or otherwise become the owners of any railroad in "this state." (P. Rec., 20.)

The legislature of the State of Iowa enacted a code in 1873, which went into effect on the 1st day of September, 1873, in which sections 1,275, 1,276, 1,300 and 1,301 are as follows:

"SEC. 1,275. Any such corporation may join, intersect and "unite its railway with the railway of any other corporation "at such point on the boundary line of this state as may be "agreed upon by such corporations. And with the assent of

"three-fourths in interest of all the stockholders may, by pur-
"chase or sale, or otherwise, merge and consolidate the stock,
"property, franchises and liabilities of such corporations, mak-
"ing the same one joint stock corporation upon such terms as
"may be agreed upon, not in conflict with the laws of this state.

"SEC. 1,276. Any such corporation which has or may con-
"struct its railway so as to meet or connect with any other
"railway in an adjoining state at the boundary line of this
"state shall have power to make such contracts and agree-
"ments with the corporations controlling such railways in an
"adjoining state for the transportation of passengers, or for
"the use of its railway by such foreign corporation, as the
"board of directors may see proper.

"SEC. 1,300. Any such corporation may sell or lease its
"railway, property and franchises to, or make joint running
"arrangements with any corporations owning or operating any
"connecting railway, and the corporation operating the railway of
"another shall in all respects be liable in the same manner and
"extent as though such railway belonged to it, subject to the
"laws of this state.

"SEC. 1,301. Any contract, lease or benefit derived there-
"from, contemplated in either of the three preceding sections,
"may be mortgaged for the purpose of securing construction
"bonds in the same manner as other property of the corporation."

In 1884, the Chicago, Iowa and Nebraska Railroad Company and the Cedar Rapids and Missouri River Railroad Company sold their remaining interests, as lessors, in the property which had been leased to the Chicago and North-Western Railway Company for valid considerations and made deeds of conveyance therefor. (P. Rec., 20-23.)

Between the years 1869 and 1884, the Chicago and North-Western Railway Company received leases of the Maple

River railroad, the Stanwood and Tipton railroad, the Des Moines and Minneapolis railroad, the Iowa Midland railroad and the Ottumwa, Cedar Falls and St. Paul railroad. (P. Rec., 19.) And in 1884, each of such lessors sold and conveyed by deed all the remaining interest in the leased property to the Chicago and North-Western Railway Company. (P. Rec., 20.)

Since the making of such deeds of conveyance, the Chicago and North-Western Railway Company claim to own the several railroads and the property connected therewith in the State of Iowa, so conveyed. And that the leases and deeds were authorized to be made under the laws of the State of Iowa, and that the Chicago and North-Western Railway Company was authorized, under the laws of Illinois, to receive such property by lease and deeds.

On the 30th day of November, 1872, the Chicago and North-Western Railway Company executed a mortgage to the Union Trust Company of New York, to secure the sum of $18,749,500 upon bonds issued by the company, and conveyed therein all of its property in the State of Iowa. And the bonds are still outstanding, the mortgage being a lien upon the property described therein. (P. Rec., 19.)

Since the year 1862, the Chicago and North-Western Railway Company has been in the actual possession of the several lines in the State of Iowa which are embraced in the leases and deeds and has operated the same as a common carrier in connection with its lines in the States of Illinois, Wisconsin and Michigan, and, as such, has been engaged in the business of commerce among the several states. (P. Rec., 21.)

It therefore appears that several contracts were in existence in 1886, when the act now in controversy was passed.

First. There was a contract between the state and each of the Iowa corporations evidenced by the articles of incorporation. By this contract the state agreed with the railroad company that it might exercise the power of eminent domain, acquire real and personal property, construct railway tracks and operate the same as a railroad, and pursue the business of a common carrier. The railroad corporation on its part, in accepting the act of incorporation, agreed to construct its road, to operate it, and to discharge the duties of a carrier.

Second. The leases made by the Iowa corporations to the Chicago and North-Western Railway Company constitute contracts between the parties thereto.

Third. The deeds made by the Iowa corporations to the Chicago and North-Western Railway Company were contracts.

Fourth. The leases and deeds having been made by authority of the State of Iowa, the Chicago and North-Western Railway Company became the assignee for the several Iowa corporations and undertook to discharge the obligations of the several Iowa corporations, and thereby a contract was made between the State of Iowa and the Chicago and North-Western Railway Company.

Fifth. The bonds and deed of trust executed by the Chicago & North-Western Railway Company, conveying its property in Iowa to secure the holders of the bonds, was a contract.

The most material element of each one of these contracts is, that the railroad shall be operated. Any act of the legislature which deprives the railway company of the right to operate its road would impair the obligation of a contract.

Rhodemacher v. *M. & St. P. R. R. Co.*, 41 Ia., 297.

Thorpe v. *R. & B. Co.*, 22 Vt., 545.
Memphis R. R. Co. v. *Commissioners*, 112 U. S., 619.
Chesapeake & Ohio R. R. Co. v. *Miller*, 114 U. S., 186.
Morawetz on Corporations, Sec. 932.

The legislature of Iowa, in passing the act of 1886, have assumed *the power to exclude* a foreign corporation from the state. It is on this principle alone the act can be maintained, if at all. Having the power of exclusion, an attempt to exercise it has been made in this instance by annexing conditions to the right of a foreign corporation to do business in the state of Iowa.

By the term of the contracts the railway corporations, created under the laws of the state, agreed to construct and operate a railroad and to discharge the duties of a common carrier. The act which prohibits the operation of the railroad impairs the obligation of that contract. By the terms of the leases and deeds, the same provisions were adopted, and this act, if enforced, would materially affect the terms of the contract. The security of the bond-holders would be greatly decreased if the railway company is prohibited from operating the road in the state. It cannot be seriously claimed that the effect of the act of 1886 will not impair the obligations in each one of the contracts mentioned.

It is, however, contended that there is no valid contract with the Chicago & North-Western Railway Company, and that it has acquired no property or rights in the State of Iowa. It is claimed that there was a want of legislative power in the several Iowa corporations to make leases or deeds to a foreign corporation and, therefore, that the alleged leases and deeds are void.

It is admitted that there must be legislative power to enable a corporation to make such a contract; but there was full authority given by the legislature of Iowa to the several railroad corporations to lease and convey their franchises and properties respectively. Section 1,300 of the Code of 1873 is as follows:

"Any such corporation may sell or lease its railway prop-
"erty and franchises to, or make joint running arrangements
"with, any corporations owning or operating any connecting
"railway, and the corporation operating the railway of another
"shall in all respects be liable in the same manner and extent
"as though such railway belonged to it, subject to the laws
"of this state."

It is claimed by the Attorney-General of Iowa that this section did not authorize the deeds of 1884, or the leases made before that time, because,

First. The Illinois and Iowa railroads were not *connected* within the meaning of this section.

Second. That this section applies only to contracts to be made between Iowa corporations, and did not authorize an agreement between an Iowa corporation and a corporation of another state.

As to whether or not the roads were connected, that is a question of fact. It appears from the stipulation that the Illinois road was built to the east bank of the Mississippi river, while the Iowa road was built to the west bank of the same river. It might be contended that this was a sufficient connection between the roads of different states to authorize contracts between them, as no nearer connection could be made at the state line, which was the center of the main channel of the Mississippi river. But a bridge was built from the east bank of the river across one channel and on an island to the main

channel, and a ferry was operated from that point to the west bank of the river, and in this manner loaded freight cars and passenger cars were transferred across the river. This was a sufficient connection to bring the parties within the terms of the statute. Whether it was or not, in 1865 the bridge was completed to the west bank of the river, and rails were laid across the whole of the river, which were connected with the rails of the Illinois company at the east bank, and with the rails of the Iowa company at the west bank, so that there was a physical connection of the iron rails of the respective corporations. After such a connection was made, a new lease was executed between the Chicago and North-Western railway and the Chicago, Iowa and Nebraska Railway Company, the latter company having acquired the right to use the bridge and tracks thereon.

In 1884, long after this physical connection had been made and the line operated as a continuous one from Chicago to the Missouri river, deeds were made to the Chicago and North-Western Railway Company. They were then corporations, owning and operating connecting railways, and were within the provisions of section 1,300.

As to the second point, section 1,300 authorizes any such corporation (which may be conceded to mean an Iowa corporation) to sell or lease its railway property and franchises to *any* corporation owning or operating *any* connecting railway. There is no limitation in this language; the agreement might be made with a domestic or foreign corporation. It was clearly the intention of the legislature to authorize an agreement with the corporation of another state, because the section concludes with the provision that the corporation operating the railway of another railroad shall be liable in the same manner and to the same extent as though such railroad belonged to it, and

that it should also *be subject to the laws of the State of Iowa.* This language would have no meaning if it was the intention to limit such an agreement to domestic corporations.

But section 1,300 first became the law on March 28, 1864, where it is found as section 4, with an addition of the last words, and those were intended to carry forward into the code the provisions of section 1 of the act passed April 3, 1868.

The Supreme court of Iowa, in the *Treadwell* case, cited *supra*, have decided that the lease of the Chicago, Iowa and Nebraska Railroad Company to the Chicago and North-Western Railway Company was authorized by the act of 1864. If so, then the deeds of 1884 were within the terms of section 1,300 of the act of 1873.

The rights of the Chicago and North-Western Railway Company and other foreign corporations similarly situated have been repeatedly recognized by the decisions of the Supreme court of Iowa.

Treadwell v. *C. & N. W. Ry. Co.*, 21 Ia., 351.
Stewart v. *C. & N. W. Ry. Co.*, 27 Ia., 282.
Davis v. *C. & N. W. Ry. Co.*, 46 Ia., 389.
Farley v. *C., R. I. & P. R. R.*, 42 Ia., 234.
Rademacher v. *M. & St. P. Ry. Co.*, 41 Ia., 297.
Pyne v. *C., B. & Q. R. R. Co.*, 54 Ia., 223.
C., B. & Q. R. R. Co. v. *Lewis*, 53 Ia., 101.
Lucas County v. *C., B. & Q. R. R. Co.*, 67 Ia., 541.

II.

THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY AND ITS EMPLOYES ARE PROTECTED AS AGAINST THE PROVISIONS OF THE ACT OF 1886, BECAUSE IT CONFLICTS WITH SECTION 8, ARTICLE I, WHICH GIVES CONGRESS THE POWER TO REGULATE COMMERCE WITH FOREIGN NATIONS AND AMONG THE SEVERAL STATES.

The Chicago and North-Western Railway Company has been engaged for more than twenty years in the transportation of merchandise and of passengers between points in different states. It has conducted this business by means of railways constructed in several different states, and has become the owner of such railways to enable it to discharge the duties of a common carrier. It has acquired its property and carried on its business with the consent of the State of Iowa and by authority of an act of Congress.

When the act of 1886 was passed the railway company was lawfully engaged in the business of inter-state commerce; the State of Iowa could not prohibit the railway company from continuing such business, or prevent it from entering the state with merchandise and passengers from other states, nor could the right of transit over the state be destroyed.

The transportation of property from one state to another is a branch of commerce among the states. The power of Congress is exclusive whepever the matter is national in its character; and the non-action of Congress indicates its will that such commerce shall be free. The existence of this power prohibits the legislature of any state from regulating the subject. These principles have been settled by this court.

R. R. Co. v. *Houghton*, 95 U. S., 465.

Gloucester Ferry Co. v. *R. R. Co.*, 114 U. S., 203.
Brown v. *Houston*, 114 U. S., 630.
Walling v. *Michigan*, 116 U. S., 465.
Wabash Railroad Co. v. *Illinois*, 118 U. S., 557.

In 1866 Congress passed an act which is now section 5,258 of the revised statutes, and reads as follows:

"Every railroad company in the United States whose road "is operated by steam, its successors and assigns, is *hereby* "*authorized* to carry upon and over its road, boats, bridges "and ferries, all passengers, troops, government supplies, mails, "freight and property, *on their way from any state to another* "*state*, and to receive compensation therefor, *and to connect* "*with roads of other states so as to form continuous lines for* "*the transportation of the same to the places of destination.* "But this section shall not affect any stipulation between the "government of the United States and any railroad company "for any transportation or fares without compensation, nor im- "pair or change the conditions imposed by the terms of any "act granting lands to any such company to aid in the con- "struction of its road, nor shall it be construed to authorize "any railroad company to build any new road, or connection "with any other road, without authority from the state in "which such railroad or connection may be proposed. And "Congress may at any time alter, amend or repeal this sec- "tion."

This court, in *Railroad Company* v. *Richmond*, 19 Wallace, 589, referring to the act of 1866, says:

"These acts were passed under the power vested in Con- "gress to regulate commerce among the several states, and "were designed to remove trammels upon transportation be-

"tween different states which had previously existed; and to "prevent the creation of such trammels in future, and facilitate "railroad transportation by authorizing the construction of "bridges over the navigable waters of the Mississippi; but "they were intended to reach trammels interposed by state "enactments or by existing laws of Congress."

It was clearly the intention of Congress, by this act, to authorize railroad companies operating lines in different states to continue to carry on the business; to prevent legislatures from interfering therewith. The act expressly says that such railroad company "*is hereby authorized*" to carry on its business, "*and to connect with roads of other states, so as to form a "continuous line for the transportation of the same to the place "of destination.*"

This act has the effect of a license, and the same rules should be applied to it as other licenses issued by authority of the United States.

The constitution expressly authorizes Congress to establish post-offices and post-roads; and section 3,964 of the revised statutes provides that the railroads, or parts of railroads, shall be established as post-roads.

The Chicago and North-Western railway was such a post-road, and the train which was being run by Barron, as engineer, at the time he was arrested, was carrying the United States mail.

It therefore appears that the Chicago and North-Western Railway Company was an inter-state road, and also a post-road, with authority to pursue its occupation as a common carrier under the constitution of the United States, and the acts of Congress passed in pursuance thereof. Barron, the petitioner, was an employe of that railway company, running a train from

Chicago to Council Bluffs, through the States of Illinois and Iowa, and it was for this act that he was arrested.

In the case of *Gibbons* v. *Ogden*, 9 Wheat., 1, it was expressly held that where Congress had provided for the issue of coasting licenses to vessels, and such licenses had been issued for certain vessels, the statute of New York, which gave Robert Fulton and Robert Livingston the exclusive right to navigate all waters within the state, was void, as repugnant to the exclusive constitutional power of Congress to regulate interstate commerce, and that the state had no authority to prohibit the licensed vessels from navigating the state waters under their licenses.

Chief Justice MARSHALL said:

"The whole act (of Congress) on the subject of the coasting "trade * * * implies unequivocally an authority to "licensed vessels to carry on the coasting trade. * * * "The word 'license' means permission or authority, and a "license to do any particular thing is a permission or authority "to do that thing; and if granted by a person having power "to grant it, transfers to the grantee the right to do whatever "it purports to authorize. * * * The license must be understood to be what it purports to be, a legislative authority "to the steamboat Bellona, 'to be employed in carrying on the "coasting trade for one year from this date.'"

And in later cases the same doctrines were reaffirmed.

Sinnot v. *Davenport*, 22 How., 227.
Foster v. *Davenport*, 22 How., 244.
Blanchard v. *The Brig*, 1 Cliff., 473.

In *Sinnot* v. *Davenport*, a statute of Alabama provided that every steamboat navigating Alabama waters should file for record in the Probate court a sworn written statement, giving

the names of the boat and its owners, their residence, extent of their interests in the boat, and in case of sale of the boat, that the vendee should file a statement of change of ownership, etc., and provided a penalty for running any steamboat on any of the state waters without filing such statement. The court held this statute void as to steamboats having a license under the act of Congress to engage in inter-state commerce.

Similar rulings have been made as to the right of telegraph companies to engage in their inter-state business under the acts of Congress.

In *Pen. Tel. Co.* v. *W. U. Tel. Co.*, 96 U. S., 1, an act of Congress declared that the erection of telegraph lines should be free to all who accept the terms and conditions of the act, and that a telegraph company of one state should not, after accepting them, be prevented by another state from prosecuting its business within her jurisdiction.

The Supreme court held this a legitimate regulation of inter-state commerce, and that an attempt by the State of Florida by statute to grant to one telgraph line the exclusive right of establishing lines was in conflict with the federal statute, and therefore inoperative against a corporation of another state entitled to the privileges of that act.

In *Telegraph Co.* v. *Texas*, 105 U. S., 460, the Supreme court held that a tax by a state on messages transmitted beyond the state was unconstitutional.

The court say: "A telegraph company occupies the same "relation to Congress to carry messages that a railroad com- "pany does as a carrier of goods. Both companies are in- "struments of commerce and their business is commerce "itself. * * * The Western Union Telegraph Company, "accepting the privileges and obligations of this provision by

" Congress, occupies in Texas the position of an instrument of " foreign inter-state commerce and the government agent for " the transmission of messages on public business. * * * " (The tax) so far as it operates on private message sent out " of the state, is a regulation of foreign and inter-state com- " merce and beyond the power of the state."

So in this case, the act of Congress gave the Chicago and North-Western Railway Company absolute right to carry on its inter-state commerce in Iowa. The Iowa legislature cannot deprive that company of such right any more than in *Gibbons* v. *Ogden*, the New York legislature could deprive licensed vessels, having the authority of Congress to carry on their business on waters within the jurisdiction of that state, of their right to continue to carry it on.

It is claimed by counsel on the other side that the law in question only imposes conditions which the company should comply with and continue to carry on its business; and that, therefore, it is not a regulation of commerce; and also, that the act of 1886 is an exercise of police power.

Any legislation by the state which seeks to impose new and additional conditions on the exercise of the authority thus conferred by the constitution and the act of Congress is void as an attempted regulation of commerce by the state.

The case of *Sinnot* v. *Davenport*, 22 Howard. 237, is directly in point on the question made by counsel. In that case the owner of a steamboat plying between the city of New Orleans, Louisiana, and cities of Montgomery and Wetumpka, in Alabama, and touching at the city of Mobile, was licensed under the act of Congress. A statute of Alabama provided that it should be the duty of owners of steamboats navigating the waters of the state, before the boat should leave the port of Mobile, to file in the office of the probate judge a statement, in

writing, setting forth (1) the name of the vessel, (2) the name of the owner or owners, (3) his or their place or places of residence, and (4) the interest each has in the vessel. It further provided that if any owner of any steamboat should run the same on any waters of the state without having first filed the statement, he should be subject to a penalty. The defendant not having complied with this law, suit was brought to recover the penalty The court held the law void.

The court say:

"The act of the legislature of the State of Alabama im-
"poses another and an additional condition to the privilege
"of carrying on this trade within her waters. * * * Un-
"less this condition of navigation and trade within the waters
"of Alabama is complied with, the vessel is forbidden to leave
"the port of Mobile under the penalty of $500 for each offense.
"* * * If this state law can be upheld, the full enjoyment
"of the right to carry on the coasting trade, as heretofore ad-
"judged by this court, under the enrollment and license, is de-
"nied to the vessel in question."

In the case of *Hall* v. *DeCuir*, 95 U. S., 485, a statute of Louisiana provided that those engaged in the business of common carriers "within this state" should make no discrimination on account of race or color, etc., and provided that, in case of a violation of the provision, any person injured should have a right of action. The defendant was the owner of a steamboat licensed under the act of Congress, and plying as a regular packet in the transportation of freight and passengers between New Orleans, Louisiana, and Vicksburg, Mississippi, touching at the intermediate landings, both within and without Louisiana. The plaintiff, a person of color, took passage upon the boat on her trip up the river from New Orleans for Hermitage, a landing-place within Louisiana, and

being refused accommodations in the cabin set apart for white persons, on account of her color, brought suit under the act. The court held the law void, as in violation of the provision of the constitution giving Congress power to regulate commerce, although there had been no regulation by Congress on the subject.

The court say:

"We think it may safely be said that state legislation which "seeks to impose a direct burden upon inter-state commerce, "or to interfere directly with its freedom, does encroach upon "the exclusive power of Congress. * * * While it (the "statute) purports only to control the carrier while engaged "within the state, it must necessarily influence his conduct "to some extent in the management of his business throughout "his entire voyage. * * * If each state was at liberty to "regulate the conduct of carriers while within its jurisdiction, "the confusion likely to follow could not but be productive of "great inconvenience and unnecessary hardship."

Mr. Justice CLIFFORD in a concurring opinion (at page 506) says:

"Nor does the fact that the plaintiff expected to leave the "steamer at a landing in the same state enlarge her right of "accommodation, or augment in any respect the obligations of "the steamer as a public carrier, for the reason that the "steamer sailed throughout the whole trip under her coasting "license, and her rights and privileges, duties and obligations "must be ascertained and defined by the regulations prescribed "by the acts of Congress. * * * Enrolled and licensed ves-"sels have the constitutional right to pursue the coasting trade "on the terms and conditions which Congress has seen fit to "prescribe, and no state legislature can interfere with that "right, either to abridge or enlarge it, or to subject it to any "terms and conditions whatsoever."

See also

Moran v. *New Orleans*, 112 U. S., 69.

The contention that the statute can be sustained as an exercise of the police power, notwithstanding it affects inter-state commerce, is best met by the language of the Supreme court in passing on the same argument in similar cases.

In *Sinnot* v. *Davenport*, *supra*, where it will be remembered the state law required the vessels to file a statement in writing in the office of the probate judge as a condition of carrying on the coasting trade within the state, the court say:

"It has been argued, however, that this act of the state is "but the exercise of a police power, which power has not been "surrendered to the general government, but reserved to the "states; and hence, even if the law should be found in con- "flict with the act of Congress, it must still be regarded as a "valid law, and as excepted out of and from the commercial "power. This position is not a new one; it has often been "presented to this court, and in every instance the same "answer given to it. * * * When an act of the legisla- "ture of a state prescribes a regulation of the subject repug- "nant to and inconsistent with the regulation of Congress, the "state law must give way; and this, without regard to the "source of power whence the state legislature derived its "enactment."

In *Henderson* v. *Mayor*, 92 U. S., 271, in which the court held the statute void as an attempt to regulate commerce, the court, referring to the police power, say:

"This power, frequently referred to in the decisons of this "court, has been, in general terms, somewhat loosely called "the police power. It is not necessary for the course of this "discussion to attempt to define it more accurately than it has "been defined already. It is not necessary, because whatever

" may be the nature and extent of that power, where not other-
" wise restricted, no definition of it, and no urgency for its use,
" can authorize a state to exercise it in regard to a subject-
" matter which has been confided exclusively to the discretion
" of Congress by the constitution. * * * Whenever the
" statute of a state invades the domain of legislation which
" belongs exclusively to the Congress of the United States, it
" is void, no matter under what class of powers it may fall,
" or how closely allied to powers conceded to belong to the
" state."

This court has expressed itself upon the principles involved, recently, in the case of the *Wabash Company* v. *Illinois*, 118 U. S., 557. In that case it was held that any state legislation which sought directly to interfere with the freedom of commerce among the several states was not valid. It was declared that an act which attempted to regulate fares and charges for a transportation, which constitutes a part of commerce among the states, was void.

I repeat that the Iowa act of 1886 can only be sustained upon the principle that the legislature had the power to prohibit the Chicago and North-Western Railway Company, which owned an inter-state line and was engaged in inter-state commerce, from entering the state of Iowa in transacting its business. It cannot be seriously contended that such a prohibition would not be invading the province of congress to regulate commerce among the several states.

Since the decision of the Supreme court of Iowa, in this case, Congress has passed a general act, regulating commerce among the states, and it is now in force. Even if the Iowa act was valid at the time it was passed, the action of Congress since that time would have the effect to abrogate the said law, and the petitioner, who was arrested for its violation, would now be entitled to a discharge.

It may be contended by counsel for the state that the legislature had the power to require the railroad company to take out a permit to do local business.

If we concede that a statute might be passed by the legislature requiring this company to take out a permit to do local business, this is not such a statute. It extends in terms to the entire business of the company. The company is prohibted from doing any business, inter-state or otherwise, without taking out the permit. It cannot obtain the permit without making the stipulation required as to all its business, and the penalties of the statute are imposed on the transaction of any business without the permit.

The company's inter-state business is the principal business, and necessarily requires the same agents and employes and is done over the same road as its other business. In fact the complaint against the petitioner only alleges in the general language of the statute that the petitioner, well knowing that the railway company had "no permit to do business in said "State of Iowa, as required by said chapter 76," did knowingly act for it. And the petitioner is held not because he is doing the company's business in Iowa, but because he is acting for the company, knowing that it has not taken out the permit required, which it could not obtain without submitting its entire business to the conditions imposed by the state.

If the valid portions of a law cannot be separated, but form connected parts of that which is invalid, all must be treated as void.

Childs v. *Shower*, 18 Iowa, 271, and cases cited.
State of Iowa v. *Geebrick*, 5 Iowa, 592.

If a clause in a statute which violates the constitution cannot be rejected without causing it to enact what the legislature never intended, the whole statute must fail.

Sprague v. *Thompson*, 118 U. S., 91.

When the parts of a statute are so mutually connected and dependent as conditions, considerations or compensation for each other as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect the legislature would not pass the residue independently, if some parts are unconstitutional and void, all the provisions which are thus dependent, conditional or connected must fall with them.

Warren v. *The Mayor*, 2 Gray, 84.
People v. *Cooper*, 83 Ill., 595.
Hinzie v. *The People*, 92 Ill., 406.

To hold that the statute is to be limited in its operations to the state business of this corporation, leaving it free to carry on its inter-state business, and for that purpose to operate its road and employ all its agencies and employes as before, with the right to remove to the Federal court cases growing out of the transaction of this business, would obviously not carry out the intention of the legislature in passing the statute.

III.

THE STATUTE OF 1886, IF ENFORCED, WILL DEPRIVE THE CHICAGO AND NORTH-WESTERN RAILWAY COMPANY OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW.

A corporation is a "person," within the meaning of the fourteenth amendment of the constitution.

Santa Clara Co. v. *Southern Pacific Co.*, 118 U. S., 396.
The County of San Maringo v. *S. P. R. R. Co.*, 8 Sawyer, 238.
Santa Clara R. R. Tax Case, 9 Sawyer, 165.

The franchise to operate a railroad company is property. And to deprive such a company of the right to use its property is, in effect, to deprive the company of the property itself.

Morawetz on Corporations, 2d Ed., Sec. 932.
Memphis & L. R. R. Co. v. *Commissioners*, 112 U. S., 619.
N. O. R. R. Co. v. *Delamore*, 114 U. S., 509.

Under the laws of the State of Iowa the Chicago and North-Western Railway Company acquired right of way, constructed a railway thereon, built station houses, and operated its railway as a carrier. The property consisted not merely of the land, superstructure, station houses and cars, but it consisted of using this kind of property in the only way in which it would be of any value. The technical ownership of property is a barren right; it is the use of the property that is the essential feature.

The act of the Iowa legislature prohibits the owner, because it is a foreign corporation, from using its property in the state. The property is real estate and fixtures attached thereto; it cannot be removed from the state; the effect of the act of the legislature is to destroy all of the property, and to take away its entire value.

IV.

THE ACT OF 1886 IS REPUGNANT TO SECTION 2 ARTICLE 3 OF THE CONSTITUTION AND VOID.

The judicial powers of the United States extend to all cases under the constitution and laws of the United States where there are controversies between a state and the citizens of another state, or between citizens of different states. (Constitution, Art. 3, Sec 2.)

It is provided in section 1, article 6, clause 2, that "This constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which may be made, under the authority of the United States shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding."

The judiciary act of 1789 provided for the removal of causes where the controversy was one between the citizens of the different states. And this provision has been continued by different acts, the last of which was March 3, 1873, until the present time.

The right to remove a case coming within the provisions of the acts of Congress is one existing under the constitution and laws of the United States, and any act of a state legislature which seeks to destroy or impair that right is void.

Insurance Co. v. *Morse*, 20 Wall., 450.
Doyle v. *Continental Ins. Co.*, 94 U. S., 543.
B. and O. R. R. Co. v. *Cary*, 28 Ohio State, 208.

But it is claimed that the *Doyle* case justifies the act of legislation now in question, and that the Chicago and North-Western Railway Company, being a corporation of another state, could be excluded from the State of Iowa, or that any condition could be imposed upon the right to do business in the state.

There is a difference between the Wisconsin and Iowa statutes. The one collided with no provision of the constitution; the other did.

It is said in *Lafayette Insurance Company* v. *French*, 18 Howard, 407, that:

"A corporation created by Indiana can transact business in "Ohio only with the consent, express or implied, of the latter "state. This consent may be accompanied by such conditions "as Ohio may think fit to impose; and these conditions must "be deemed valid and effectual by other states, and by this "court, *provided they are not repugnant to the constitution and "laws of the United States, or inconsistent with those rules of "public law which secure the jurisdiction and authority of each "state from encroachment by all others, or that principle or "maxim of justice which forbids condemnation without oppor- "tunity for defense.*"

See also:

Morawetz, Private Corporations, Secs. 972, 974.

If the North-Western Railway Company is a citizen of another state and it has acquired property under the laws of Iowa and a controversy arises between the company and a citizen of Iowa, then the right conferred under the constitution of the United States and the acts of Congress with reference to the jurisdiction of the federal court attached, when such right was once created, it would be protected under the constitution and laws of the United States, and it would not be within the power of the legislature of a state to impair or to defeat that right.

The power of the state to exclude a foreign corporation is not denied. That principle having been clearly established by the decisions of the Supreme court of the United States with reference to insurance companies; but the power is not an unlimited one. Whenever it collides with the constitution of the United States and the laws passed in pursuance thereof, the state legislation is void.

The claim in this case is, that the act of 1886 has the effect of depriving the railway company of its property without due

process of law, and that it is repugnant to the provisions of the federal and state constitution, which prohibits the legislature from passing any act which impairs the obligation of a contract, and that it interferes with the provision of the federal constitution which confers exclusive powers upon Congress to regulate commerce among the states.

It must be conceded that the North-Western Railway Company is engaged in carrying on commerce among the several states within the meaning of the constitution. It would not be within the power of the state legislature to prohibit any common carrier, no matter what his means of conveyance was, from bringing woolen cloths or cotton goods of any description into the state for purposes of barter and sale. In like manner it would not be within the power of the legislature to prohibit such common carrier from entering the state with goods of that kind. This would be the law without regard to a question of a corporation, lease or deed. Any common carrier, whether a corporation or individual, has the right to enter the State of Iowa with merchandise or other lawful articles of commerce.

The effect of the act of 1886 is to prohibit all foreign corporations pursuing the business of a common carrier from entering the state and bringing passengers and freight from another state unless they submit to the provisions of that act. If the right to enter the state for such purposes exists it cannot be embarrassed by conditions of any kind.

There was a contract between the state and the railway company, evidenced by the several charters granted by the state, and accepted by the corporations; this contract cannot be impaired by any act of the legislature. By the terms of the contract the railway company had the right to acquire real and personal property in the State of Iowa, to be used by it as a common carrier, and it assumed the obligations and performed

the duties of such a carrier. The state had given its consent in this contract to the railway company to condemn land, and to acquire the property necessary to it for its use; the railway company on its part had agreed to use such property for the public interest and to operate its road. The imposition of a new provision by which the railway company was required to surrender a right existing under the constitution and laws of the United States, was a material alteration of the contract.

The railway company became the owner of property in this state, and it can not be deprived of that property by any act of the legislature. Such an act would not be due process of law, and is prohibited by the 14th amendment.

These limitations of the constitution come within the principle asserted by this court in *LaFayette Insurance Co.* v. *French*, 18 Howard, 407. The conditions imposed by the Iowa statute are repugnant to the constitution and laws of the United States, and are inconsistent with those rules of public law which secure the jurisdiction and authority of each state from encroachment by all others, and with that principle or maxim of justice which forbids condemnation without opportunity for defense.

The statute also conflicts with the acts of Congress already referred to, passed under the provision of the constitution authorizing it to regulate commerce among the several states by the act of 1866.

The lines of the Chicago and North-Western Railway Company running into and through Iowa from other states, were inter-state roads, which were sanctioned by that act, and the company was licensed to carry on the business of a carrier, and to engage in commerce among the several states. The State of Iowa can not prevent the exercise of the right thus acquired.

These principles clearly distinguish the case at bar from the *Doyle case.*

One of the provisions of the act is that if the corporation shall remove any cause from the state court into any of the federal courts that it shall forfeit the permit, and is thereafter to be treated the same as if it had none. As the permit cannot be issued without such a stipulation, and as a corporation cannot be required to make such an agreement, waiving its rights under the constitution and laws of the United States, it follows that the corporation is not required to make an application at all, or to accept a permit which must rest upon such an unlawful stipulation.

An examination of the act of 1886 will show that there is no provision whatever to which the stipulation could apply except that contained in section 3. The requirement in section 1, to file a certified copy of the articles of incorporation, with a resolution of the board of the board of directors, in which service of process is to be authorized upon any officers or agents in this state, must precede the stipulation and permit. The acts are to be done before the permit could be issued, and, therefore, the language that the permit shall be subject to each of the provisions of the act could not be intended to apply to the filing of such certified copy and resolution. Section 2 could not be included within this language, because it only applies to corporations without the permit, and where no stipulation has been made. Section 4 fixes the penalties for doing business without the permit. It will, therefore, be seen that the only provision in the act covered by the language in the first section that the permit should be subject to each of the provisions of the act, are those contained in section 3, which prohibit the removal of causes.

Irrespective of this construction, it is clear that the object—and only object of the act—was to prevent foreign corpora-

tions from removing cases to the federal courts. The mere filing of the articles of incorporation could not serve any useful purpose, and it could not have been the object of the legislature in passing this law. By the general law of the state, section 2,611, service may be made upon any general agent, or upon any station, ticket or other agent of the corporation, or upon the person transacting the business of the corporation in the county where the suit is brought, and if there is no such agent in the county, then upon any agent transacting business in any other county. This provision is as large as that contained in the act of 1886 with reference to the persons on whom process may be served. It could not have been the object, therefore, of the legislature to pass this statute for the purpose of compelling a designation of a person on whom process might be served.

If the intention was to prevent the removal of causes from State to the Federal courts, then the whole act must be held to be void.

The parts of this statute are so connected and dependent, that they cannot be separated so as to hold one part valid and the other part invalid. The true inquiry is as to the intent of the legislature, and, that being ascertained, the question as to the validity of the act will be decided.

Cooley's Constitutional Limitations, 178–215.
Warren v. *Mayor*, 21 Gray, 84.
State v. *Commissioners*, 5 Ohio State, 497.
Shuson v. *Racine*, 13 Wis., 398.
Wash v. *Dousman*, 28 Wis., 541.
Eckhardt v. *State*, 5 W. Va., 515.
Commonwealth v. *Potts*, 79 Pa. State, 164.

V.

THE ACT OF 1886 IS NOT WITHIN ANY RESERVED POWER.

It appears by the record that the Cedar Falls and Missouri River railroad had the benefit of a land-grant from the state. It is claimed that, by accepting the grant, the company consented that the legislature should pass such an act as that now in question. The language of the 14th section of the act making the grant is as follows:

"SEC. 14. Said railroad companies accepting the provis-
"ions of this act shall at all times be subject to such rules and
"regulations as may from time to time be enacted and pro-
"vided by the General Assembly of Iowa, not inconsistent
"with the provisions of this act, or to the act of Congress
"making the grant." (Laws of 1856.)

The Wall Lake and Sauk City branches, and a part of the Maple River railroad, before the property was leased by the company to the Chicago and North-Western Railway Company, received local aid in the way of forced taxation of the property of the several townships through which they were constructed, which tax was voted under the laws of Iowa authorizing the same.

And it is claimed that, by the terms of this act, a power was reserved which would justify the legislature in passing the act in question, and applying it to the Chicago and North-Western Railway Company.

The legislature passed an act entitled "An Act to enable "Townships, Incorporated Towns and Cities to aid in the "Construction of Railroads," approved April 12, 1870, and which went into effect April 17, 1870, the fourth section of which act is as follows:

"SEC. 4. All railroads constructed by or with the aid of "any taxes levied and collected under the provisions of this "act shall be subject to the control of the General Assembly "in regard to the management of the same and the charges "for the transportation of freight and passengers thereon." (Laws of 1870, 106.)

And the legislature of the State of Iowa passed an act entitled "An Act to enable Townships and Incorporated "Towns and Cities to aid in the Construction of Railroads," approved March 13, 1876, which went into effect March 31, 1876, section nine of which act provided as follows:

"SEC. 9. All railroads in this state constructed by or with "the aid of any taxes levied and collected under the provis- "ions of this act shall be subject to the control of the General "Assembly thereof, in regard to the management of the same "and the charges for the transportation of freights and pas- "sengers thereon." (Laws of 1876, 123.)

The rules and regulations intended by the land grant act and the control and management, including the fixing of charges for transportation, mentioned in the said acts, would not justify the provisions of the act of 1886; the right of the state to control the rates has been fully established by the decisions of this court; the rules and regulations were those relating to the ordinary operation of the road, it was not contemplated in those acts of legislation that the state ever had the power to prohibit the exercise of a right under the constitution and laws of the United States; and if it never had such a power, it could never have been intended to reserve it.

And section 1,090 of the code of the State of Iowa, adopted in 1873, is as follows:

"SEC. 1,090. The articles of incorporation, by-laws, rules "and regulations of corporations hereafter organized under

"the provisions of this title, or whose organization may be "adopted or amended hereunder, shall at all times be subject "to legislative control, and may be, at any time, altered, "abridged or set aside by law, and every franchise obtained, "used or enjoyed by such corporation may be regulated, with- "held or be subject to conditions imposed upon the enjoyment "thereof whenever the general assembly shall deem necessary "for the public good."

It is claimed that the above section, which is a part of the general law authorizing the incorporation of railroad companies, gave the power to the legislature to pass the statute of 1886.

While the language of this section is broad, it can scarcely be held to justify the passage of an act which would interfere with rights acquired under the constitution and laws of the United States. It has never yet been held that property could be confiscated, or vested rights destroyed under such a reservation. If this statute is literally construed, the legislature might take away franchises, but that would not authorize it to divest the owner of the property, and part of this property would be the right to use it to operate as a railway. The object of section 1090 was to enable the legislature to amend the charter or perhaps even to repeal it. The effect of a repeal would be to destroy the existence of the corporation, but that would not take away the franchises of the right to operate the road and to use the property. The distinction between the two cases is clearly drawn in *Memphis R. R. Co. v. Commissioners*, 112 U. S., 619.

But this section of the code was not enacted until 1873, while the Chicago, Iowa and Nebraska railroad and the Cedar Rapids and Missouri River railroad, which now make the Trunk Line of the Chicago and North-Western Railway Com-

pany, were organized long before that time. Section 1090 of the code of 1873, is no part of the charters of these two companies. Indeed, only three of the branches of the Chicago and North-Western Railway Company were constructed by corporations organized after 1873; and these were, the Maple River company, the Des Moines and Minneapolis Railroad Company, and the Ottumwa, Cedar Rapids and St. Paul railroad. (Printed Record, 22.)

There is a conclusive answer to the claim of counsel that there was a reserved power which will sustain the action of the legislature in passing the act of 1886; that, is, that the act of 1886 requires the Chicago and North-Western Railway Company to take out a permit as a condition to its right to operate its road, or any part of it, in the State of Iowa. And in order to obtain that permit, a stipulation must be made that it will not remove any case from the state to the federal courts; and and in case it does so, that its rights as a corporation under the laws of the state shall cease. This act applies not merely to that railroad which had the benefit of the land grant, or to those branches which received local aid, or to those corporations organized since 1873. The act was not an exercise of power under such reservation, and it is a unit, and must stand as a whole, or fall. If the legislatare ever passes an act to apply to the particular railroads which had the benefit of the land grant, or the aid acts, or which was organized under the act of of 1873, then the question as to such reserved power will be raised, and not till then.

W. C. Goudy,

For Petitioner.

121-186

IN THE

Supreme Court of the United States.

HENRY S. BARRON,
Plaintiff in Error.

vs.

GEO. W. BURNSIDE,
Sheriff of Linn County, Iowa.

In Error to the Supreme Court of the State of Iowa.

W. C. GOUDY, ESQ., *for Plaintiff in Error.*

A. J. BAKER, *Attorney-General of Iowa, for Defendant in Error.*

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A. J. BAKER, *Attorney-General of Iowa, for Defendant in Error.*

STATEMENT AND BRIEF OF DEFENDANT IN ERROR.

THIS case grows out of an attempt upon the part of the officers of the State of Iowa to enforce certain provisions of chapter 76 of Laws of Twenty-first General Assembly of the said State.

The law in question is as follows:

AN ACT Requiring Foreign Corporations to File their Articles of Incorporation with the Secretary of State, and Imposing Certain Conditions upon such Corporations Transacting Business in this State.

Be it enacted by the General Assembly of the State of Iowa:

SECTION 1. That hereafter any corporation for pecuniary profit other than for carrying on mercantile or man-

ufacturing business organized under the laws of any other state or of any territory of the United States or of any foreign country desiring to transact its business, or to continue in the transaction of its business in this state shall be and hereby is required, on and after September, [first] A. D. 1886 to file with the secretary of state a certified copy of its articles of incorporation duly attested, accompanied by a resolution of its board of directors or stock-holders, authorizing the filing thereof and also authorizing service of process to be made upon any of its officers or agents in this state engaged in transacting its business, and requesting the issuance to such corporation of a permit to transact business in this state. Said application to contain a stipulation that said permit shall be subject to each of the provisions of this act. And thereupon the secretary of state shall issue to such corporation a permit in such form as he may prescribe for the general transaction of the business of such corporation. And upon the receipt of such permit such corporation shall be permitted and authorized to conduct and carry on its business in this state. Provided that nothing in this act contained, shall be construed, to prevent any foreign corporations, from buying, selling, and otherwise dealing, in notes, bonds, mortgages, and other securities, or from enforcing the collection of the same, in the federal courts, in the same manner, and to the same extent, as is now authorized by law.

SEC. 2. No foreign corporation which has not in good faith complied with the provisions of this act, and taken out a permit, shall hereafter be authorized to exercise the power of eminent domain or exercise any of the rights and privileges conferred upon corporations until they have so complied herewith and taken out such permit.

SEC. 3. Any foreign corporation sued or impleaded in any of the courts of this state upon any contract made or executed in this state or to be performed in this state or for any act or omission, public or private, arising, origin-

ating, or happening in this state, who shall remove any such cause from such state court into any of the federal courts held or sitting in this state, for the cause that such corporation is a non-resident of this state or a resident of another state than that of the adverse party, or of local prejudice against such corporation, shall thereupon forfeit and render null and void any permit issued or authority granted to such corporation to transact business in this state; such forfeiture to be determined from the record of removal, and to date from the date of filing of the application on which such removal is effected, and whenever any corporation shall thus forfeit its said permit no new permit shall be issued to it for the space of three months, unless the executive council shall for satisfactory reasons cause it to be issued sooner.

SEC. 4. Any foreign corporation that shall carry on its business and transact the same on and after September 1, 1886 in the state of Iowa by its officers, agents, or otherwise, without having complied with this statute and taken out, and having a valid permit shall forfeit and pay to the state for each and every day in which such business is transacted and carried on the sum of one hundred dollars ($100) to be recovered by suit in any court having jurisdiction. And any agent, officer or employe who shall knowingly act or transact such business for such corporation when it has no valid permit as provided herein shall be guilty of a misdemeanor and for each offense shall be fined not to exceed one hundred dollars (100) or imprisoned in the county jail not to exceed thirty days and pay all costs of prosecution.

SEC. 5. All acts and parts of acts inconsistent with the provisions hereof are hereby repealed; provided, that nothing contained in this act shall relieve any company, corporation, association or partnership from the performance of any duty or obligation now enjoined upon them

or required of them or either of them by the laws now in force.

Approved April 6, 1886.

The plaintiff, Henry S. Barron, is a locomotive engineer, and at, and prior to the time he was arrested was engaged as such locomotive engineer in assisting to move a train of cars on the line of railroad operated by the Chicago & Northwestern Railway Company in Iowa, his run as such engineer being from Clinton, in Iowa, to Boone, in Iowa.

The said Chicago & Northwestern Railway Company is a corporation created by and existing under the laws of the State of Illinois, and has no corporate existence in the State of Iowa. Nor has it complied with the provisions of section one of said chapter 76.

The plaintiff in error was fully cognizant of all the foregoing facts, and knew at the time he was engaged as such locomotive engineer, in assisting to move said train of cars, that the said railway company had not complied with the provisions of said chapter 76.

The warrant of arrest was issued by a justice of the peace of said Linn county upon proper information charging an offense as designated in Sec. 4 of said chapter 76.

After his arrest the plaintiff in error made petition to the Supreme Court of Iowa in session at Des Moines for a writ of *habeas corpus* admitting all the essential facts and claiming that said chapter 76 is in violation of the provisions of the Constitution of the United States and is void.

The particular sections of the Constitution of the United States which it is claimed is infringed by the act in question are:

First—Sec. 8, Art. 1: "Congress shall have power to regulate commerce with foreign nations and among the several States and with the Indian tribes."

Second—Sec. 10, Art. 1: "No State shall pass * * * any bill of attainder, *expost facto* law, or law impairing the obligation of contracts."

Third—Sec. 2, Art. 3: "The judicial power shall extend to all cases in law and equity * * * * between citizens of different States, and to the laws of Congress enacted in pursuance to the provisions of said section which authorizes the removal of causes from State to Federal Courts."

Fourth—Sec. 1, Art. 14, Amendments to Constitution of U. S.: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction, the equal protection of law."

In determining the questions herein involved the court will be asked to consider the following admitted facts:

First. The C. & N. W. R. R. Co. is a corporation foreign to Iowa.

Second. It is operating a number of lines of railroad in Iowa, all of which were constructed by corporations created under the laws of Iowa and organized for the purpose of constructing and operating railroads within said State.

Third. That the corporations so organized in Iowa did construct said several lines of railway and that several of them were granted municipal aid by way of forced taxation upon the townships through which they ran.

Fourth. That all of the corporations of Iowa so constructing said railroads were granted and exercised the powers of eminent domain in condemning lands for right-of-way.

Fifth. That other of said lines of railroad so constructed in Iowa were what are known as "Land Grant Railroads." That is, Congress had granted to the State of Iowa public lands to be held in trust by said State to aid in the construction of certain trunk lines of railroad in the State. The State accepting said trust imposed upon the corporations to be benefited thereby certain

conditions of restraint which the corporations accepted and agreed to. The said laws will be found quoted hereinafter in the brief.

Sixth. The plaintiff in error claims that the C. & N. W. R'y Co, being a corporation foreign to Iowa, purchased these several lines of railroad and the franchises of the Iowa corporations and took deeds therefor in the month of July, 1884.

It is admitted by the defendant that in so far as it was competent for the said Iowa railroads so to do they did bargain and sell to this foreign corporation all their franchises and property of every kind, and that since said month of July, 1884, the C. & N. W. R'y Co. has had possession of said property operating the said lines of railway and claiming to be the absolute owners thereof.

In considering this cause the following statutes of the State of Iowa will be referred to, as bearing upon the questions submitted.

AN ACT to accept of the grant and carry into execution the trust conferred upon the State of Iowa, by an act of Congress entitled an act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of Rail Roads in said State, approved May 15, 1856

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That the lands, rights, powers and privileges, granted to, and conferred upon, the State of Iowa, by the act of Congress entitled "an act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of Rail Roads, in said State, approved May 15th 1856," be and the same are hereby accepted upon the terms, conditions and restrictions, contained in said act of Congress.

SEC. 2. That so much of the lands, interest, rights, powers and privileges, as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a Rail Road from Burlington on

the Mississippi river to a point on Missouri, near the mouth of the Platte river, are hereby disposed of, granted and conferred upon the Burlington and Missouri River Rail Road Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 3. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress as aforesaid, to aid in the construction of a Railroad from Davenport via. Iowa City and Ft. Des Moines to Council Bluffs, are hereby disposed of, granted and conferred to and upon the Mississippi and Missouri Rail Road Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 4. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a Rail Road from Lyons City northwesterly to a point of intersection with the main line of the Iowa Central Air Line Rail Road near Maquoketa, thence on said main line, running as near as practicable to the forty-second parallel, across the said State to the Missouri river, are hereby disposed of, granted and conferred to and upon the Iowa Central Air Line Rail Road Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 5. That so much of the lands, interest, rights, powers and privileges as are or may be granted and conferred, in pursuance of the act of Congress aforesaid, to aid in the construction of a Rail Road from the City of Dubuque to a point on the Missouri river at or near Sioux City, with a branch from the mouth of the Tete Des Morts to the nearest point on said road, to be completed as soon as the main line is completed to that point, are hereby disposed of, granted and conferred to and upon the Dubuque and Pacific Rail Road Company, a body corporate, created and existing under the laws of the State of Iowa.

SEC. 6. The lines and routes of the several roads above described shall be definitely fixed and located on or before the first day of April next, after the passage of this act, and maps or plots, showing such lines and routes, shall be filed in the office of the Governor of the State of Iowa, and also in the office of the Secretary of State of the State of Iowa. It shall be the duty of the Governor, after affixing his official signature, to file such map in the Department having the control of the public land in Washington; such location being considered final only so far as to fix the limit and boundary within which lands may be selected; and if it shall appear that the lands that have been donated by the act of Congress aforesaid, for the construction of the several lines above indicated, cannot be obtained by said companies within the limits and along any part of the line aforesaid, the Governor shall from time to time appoint agents to make such selections as may be authorized or granted by Congress for the lines aforesaid; but the compensation of such agents and the costs, expenses and charges attendant upon and occasioned by making such selections, shall be fixed, regulated, paid and borne by each of said Rail Road Companies respectively, upon and for its own line.

SEC 7. The Iowa Central Air Line Rail Road Company shall furnish, equip and operate the branch of their Rail Road that will be constructed under this grant from Lyons City to the point of intersection with the main line of their road near Maquoketa, in the same manner with their main line from the west, and as completely as, though the same was a continuation of said main line, and shall never give any preference to the main line of said road, or any part thereof, as defined in their articles of incorporation, by business arrangements, tariff of prices, or otherwise, over the said branch to their Railroad.

SEC. 8. The grants aforesaid are made to each of said companies respectively, upon the express condition, that

in case either of such Railroad Companies shall fail to have completed and equipped seventy five miles of its road within three years from the first day of December next, thirty miles in addition in each year thereafter, for five years, and the remainder of their whole line of road in one year thereafter, or on the first of December, A. D., 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon the company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of by the company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 9. The Roads aforesaid shall be constructed upon a guage with a width of four feet, eight and one-half inches, and the iron used in the track shall be of approved quality and pattern, and the said Roads shall be completed and finished in a style and of a quality equal to the average of other first-class western roads, and when the Roads, or any of them, authorized to be constructed by this act, shall be intersected by the roads of any other Railroad Company now constructed, or hereafter to be constructed, it shall be the duty of such Road or Roads, receiving the benefit of this act, to furnish all proper and reasonable facilities and to join such other company in making all necessary crossings, turnouts, sidelings and switches, and other conveniences necessary for the transportation of all freight and passengers over either or any road or roads hereby mutually accommodated, whether said passengers or freight are brought by the roads benefitted by this act, or any other road or roads now constructed, or which may hereafter be constructed, and at such rates as shall not in any case exceed the regular tariff of charges on such road or roads.

SEC. 10. All persons, who at the time said grant was made, held valid claims by actual occupation and improvement upon any of the lands embraced in said grant, shall be protected in the same, and entitled to purchase

and enter the same upon the terms and conditions hereinafter provided.

SEC. 11. Any person, wishing to avail himself of the provisions of this act, shall within three months of the passage thereof, file his application for that purpose with the Judge of the county where such lands may be situate, and shall prove to the satisfaction of said Judge that his claim is valid, and that the same existed at the time said grant was made; and upon such proof being made, such Judge shall give to the applicant a certificate of the fact, and such certificate shall entitle the holder or his bone fide assignee to enter such land at the rate of two dollars and fifty cents per acre; *Provided*, that no person, claimant, or the assignee of a claim, shall be entitled to more than one hundred and sixty acres of land under this act; *And provided further*, That the person asserting a claim, whether as claimant or assignee, shall file his affidavit that he has not either directly or indirectly received the benefits of the provisions of this act. Before any rights shall be acquired under such certificate, a copy of the same together with the evidence shall be served on the secretary of the company interested, and such company shall have the right to appeal from the decision of such Judge to the District Court, in the same manner as appeals are taken from the decisions of Justice of the Peace at any time within ninety days after the service of such papers, and the same shall be tried as other appeal cases, and an appeal may be taken to the Supreme Court by either party, in the same manner as appeals in other cases.

SEC. 12. Such certificate on being filed with the secretary of the company upon whose line of Road such lands may be situate, when no appeal has been taken as herein provided, shall entitle the holder or his assignee to the possession of said land, until the title shall become vested in the company; upon payment thereafter to the Treasurer of the Company for said land at the price above des-

ignated, such person shall receive from the Secretary of the Company a patent to such land, not exceeding in quantity one hundred and sixty acres. Such deed or patent shall vest in the purchaser all the title of said company in and to such lands, except so far as to reserve to the company all such right-of-way and station grounds as may be actually necessary for the uses of the company.

SEC. 13. The said companies shall each severally assent to and accept the provisions of this act, by a written instrument, under the seal of such corporation, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the Secretary of State, and be by the Secretary recorded in the book by him kept for the recording of articles of association.

SEC. 14. Said Rail Road Companies, accepting the provisions of this act, shall at all times be subject to such rules and regulations as may from time to time be enacted and provided for by the General Assembly of Iowa, not inconsistent with the provisions of this act, and the act of Congress making the grant.

SEC. 15. It shall be the duty of the companies receiving the benefits of this act, to make a regular annual report of their proceedings at the usual time and place of electing their officers, exhibiting a detailed statement, as far as practicable, of the amount of their expenditures, liabilities, &c., a copy of which shall be filed in the office of the Secretary of State.

SEC. 16. *Be it further enacted*, That any of said companies accepting the grants of lands under this act, shall take the same with the conditions imposed and incumbrances specified in this act, and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances or conditions in this act imposed.

SEC. 17. This act shall take effect and be in force from

and after its publication in the Iowa Capital Reporter, and Iowa City Republican.

APPROVED, July 14th, 1856.

I certify that the foregoing act was published in the Iowa Capital Reporter and Iowa City Republican on the 16th day of July, 1856.

GEO. W. McCLEARY,
Secretary of State.

AN ACT to carry into execution the trust conferred upon the State of Iowa, in respect to the lands granted by an act of Congress, approved May 15th, 1856, to aid in the construction of a Railroad from Lyons City, across the State of Iowa, and near the forty-second parallel to the Missouri River.

SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That so much of the lands, interests, rights, powers, and privileges as have been or may be granted and conferred in pursuance of the act of Congress, entitled "an act making a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of Railroads in said State, approved May 15th, 1856, to aid in the construction of a Railroad from Lyons City, northwesterly to a point of intersection with the main line of the Iowa Central Air Line Railroad, near Maquoketa; thence on said main line running as near as practicable to the forty-second parallel across the State of Iowa to the Missouri River," are hereby disposed of, granted and conferred to and upon the Cedar Rapids and Missouri River Railroad Company, a body corporate, created and existing under the laws of the State of Iowa, *Provided*, however, that no portion of the grants of land provided for in this act shall be applied to the liquidation of any debt or obligation heretofore made or contracted by the said Cedar Rapids and Missouri River Railroad Company, or of the Chicago, Iowa and Nebraska Rail Road Company; *Provided*, further, that it is hereby declared to be the true intent and meaning of this act, that the State of Iowa according to the conditions herein specified—conveys and

grants to the Cedar Rapids and Missouri River Rail Road Company, her right, title to and interest in the aforesaid lands, and nothing more; and in no event shall said Company have any claim or recourse against the State for any defect in the title or conveyance of said lands.

SEC. 2. The grant by this Act conferred upon said Company is made upon the express condition that in case said Company shall fail to have completed and equipped forty miles of its road along the route aforesaid, and West from some convenient point on the Cedar River, near the 42d parallel, within one year from the first day of December next, after the passage of this act, thirty miles in addition, each year thereafter, for two years, and the remainder of their whole line of road in two years thereafter, or by the first day of December, 1865, then and in that case it shall be competent for the State of Iowa to resume all rights conferred by this act upon said Company so failing, and to resume all rights to the lands hereby granted and remaining undisposed of to the Company so failing to have the length of road completed in manner and time as aforesaid.

SEC. 3. The provisions of the ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and fifteenth sections of the first chapter of the laws of Iowa, passed at the Extra Session of the Fifth General Assembly, and approved July 14th, 1856, so far as the same are applicable to this Company under the provisions of this act, and the one hundred and eighty-second chapter of the laws of this State, enacted by the Sixth General Assembly, and approved January 28th, 1857; and the eighty-fifth chapter of the laws of this State, enacted by the Seventh General Assembly, and approved March 20th, 1858, so far as said enactments are not inconsistent with the provisions of this act, be and the same are hereby made applicable to this Company, receiving the benefits of the grant hereby conferred; and it is further provided, that said Railroad shall be and remain a public highway for the use of the

Government of the United States, free from toll or other charge upon the transportation of any property or troops of the United States; and if the said Company shall accept this grant upon the condition aforesaid, which acceptance shall appear by an express writing, under the seal of said corporation, with the signatures of its President and Secretary, and shall be filed in the office of the Secretary of the State of Iowa, within ninety days after the approval of this act by the Governor, it shall take the same with the conditions imposed, and incumbrances specified in this act; and shall in no event have any claim or recourse whatever upon the State of Iowa, for a misapplication of said grant, incumbrances or conditions in this act imposed.

SEC. 4. It is hereby further provided, that said Cedar Rapids and Missouri River Railroad Company shall be entitled to the full amount of land authorized by said act of Congress, as the work progresses, for the first three sections of road, of twenty miles each, which shall be constructed by said Company; but thereafter as the work progresses, they shall be entitled to an equal pro rata apportionment of the lands remaining subject to appropriation in aid of this work, to be ascertained by a division of the quantity of lands so remaining by the number of whole sections of twenty miles each, extending from the point of construction then reached to the Missouri River.

SEC. 5. It is further expressly provided, that this act shall not be so construed as to give title to any portion of said lands to the Company, accepting the provisions hereof, otherwise than as the work progresses, and as provided in the act of Congress aforesaid, conferring the lands upon the State of Iowa, namely: When they shall have completed each section of twenty miles of road aforesaid, they shall be entitled to the amount of land apportioned thereto, and not before; and they shall not become entitled to the first one hundred and twenty sec-

tions authorized by act of Congress, until such first section of their road shall have been completed, at which time they shall become entitled to the first apportionment of land. Nor shall this act be so construed as in any manner to prevent the General Assembly of this State from resuming, upon failure of either of the conditions named in the second section of this act, all lands to which the said Company shall not have then become entitled by completion of one or more sections as aforesaid of the said road.

SEC. 6. And it is further expressly provided that said Company shall build or cause to be built before the first day of January, 1861, a railroad of like guage and equal in quality to the Chicago, Iowa and Nebraska Railroad from Pearl street, in Lyons City, to a point of intersection with the said Chicago, Iowa and Nebraska Railroad within the corporate limits of Clinton City, with such switches and side tracks as the business of said town of Lyons may require; and to operate or cause to be operated the same by running passenger and freight cars, of the same class with those used by the Chicago, Iowa and Nebraska Railroad, in close connection forever with all regular trains at any time run on said Iowa and Nebraska Railroad, without occasioning any unnecessary delay to freight or passengers at said point of intersection; and the charge per mile for transportation of freight or passengers shall never exceed the regular charges for like service on the Chicago, Iowa and Nebraska Railroad; the intent and meaning of this section being to secure to the citizens of Lyons the same privileges and benefits of a Railroad connection that are enjoyed by any other place on said Chicago, Iowa and Nebraska Railroad; and it is hereby expressly provided that no lands shall be certified by the Governor to said Cedar Rapids and Missouri River Railroad Company until they have complied with all the requirements of this section.

SEC. 7. Said Company shall not commence to build or

construct said road, at any point further west from the Mississippi River than the town of Marion in Linn county, Iowa, and the Governor of the State shall not certify any of the lands herein transferred to said Company, until that portion of the Road between said town of Marion and the city of Cedar Rapids, together with so much more of said road as to make in the aggregate at least twenty miles, shall be completed, equipped and operated by said Company or its successors.

SEC. 8. And be it further enacted that it shall be deemed a felony for the President and Directors or Managers of the said Rail Road Company accepting the grant of land to be conveyed by this act to wilfully misapply any of the land herein granted, to any other purpose than the carrying into effect the true meaning and intent of this act, and the President, Directors or Managers of said Railroad Company who may be guilty of any such wilful misapplication of the lands herein granted shall be liable to a fine of not less than five thousand dollars, or imprisonment in the county Jail not less than twelve months and not more than three years, or both such fine and imprisonment at the discretion of the court before whom any case may be tried.

SEC. 9. It is further expressly provided, that if said Cedar Rapids and Missouri River Rail Road Company shall fail or refuse to accept of this grant upon the conditions hereby imposed, and in time and manner, as aforesaid, the Census Board of this State is hereby authorized, by proper writing with the seal of State affixed thereto, to confer the same upon such party or company as shall in their judgment, be competent to carry out the enterprise hereinbefore provided for in good faith, and which shall accept the grant by a proper written instrument duly executed and attested, and shall file the same in the office of Secretary of this State, subject to all the preceding sections of this act, and the same shall in that case, be applicable to such grantee, subject to all the foregoing terms

and conditions of this act as fully as if named and originated herein.

SEC. 10. This act shall take effect and be in force from and after its publication in the Iowa State Register and in the Iowa State Journal.

Approved March 26th, 1860.

I hereby certify that the foregoing act was published in the Iowa State Journal, April 7th, 1860, and in the Iowa State Register, April 11th, 1860.

ELIJAH SELLS,
Secretary of State.

AN ACT to facilitate the construction and operation of Railroads in the State of Iowa.

SEC. 4. The board of directors of any railroad company shall have power to authorize contracts of lease or joint running arrangements with any connecting road, for the operation of such connection, upon such reasonable and just terms as may be agreed upon by the parties, and the party thus leasing or operating the railroad of another company, shall, in all respects, be liable to the public for their acts or negligence, in the same manner as though the road belonged to them.

SEC. 5. This act shall apply to all contracts and leases heretofore made, as well as to those to be made hereafter.

Afterward, in 1873, the laws of Iowa were codified and the Code then adopted went into effect September 1, 1873. The following sections in said Code will also be referred to:

"SEC. 1080. The articles of incorporation, by-laws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereafter, shall, at all times, be subject to legislative control, and may be at any time, altered, abridged, or set aside by law, and every franchise obtained, used or enjoyed by such corporation, may be regu-

lated, withheld or subject to conditions imposed upon the enjoyment thereof, whenever the General Assembly shall deem necessary for the public good."

"SEC. 1275. Any such corporation may join, intersect, and unite its railway with the railway of any other corporation at such point on the boundary line of this State as may be agreed upon by such corporations. And with the assent of three fourths in interest of all the stockholders, may, by purchase and sale, or otherwise, merge and consolidate the stock, property, franchises, and liabilities of such corporations, making the same one joint stock corporation upon such terms as may be agreed upon not in conflict with the laws of this State.

"SEC. 1276. Any such corporation which has or may construct its railway so as to meet or connect with any other railway in an adjoining State at the boundary line of this State, shall have power to make such contracts and agreements with the corporations controlling such railways in an adjoining State, for the transportation of freight and passengers, or for the use of its railway by such foreign corporation, as the board of directors may see proper.

"SEC. 1277. Any such corporation organized for the purpose of constructing a railway from a point within the State may construct or extend the same into or through any other State under such regulations as may be prescribed by the laws of such State; and the rights and privileges of such corporation over said extension in the construction and use thereof, and in controlling and applying the assets, shall be the same as if its railway was constructed wholly within this State."

"SEC. 1300. Any such corporation may sell or lease its railway property and franchises to, or may make joint running arrangements with, any corporation owning or operating any connecting railway, and the corporation operating the railway of another, shall, in all respects, be liable in the same manner and extent as though such railway belonged to it, subject to the laws of this State."

Also, chapter 128, laws 1880, approved March 25, 1880:

"Any railroad company organized or created by or under the laws of any other State, owning or operating a line or lines of railroad in such State is hereby authorized to extend and build its road or any branches thereof into the State of Iowa; and such railroad company shall have and possess all the powers, franchises and privileges, and be subject to the same liabilities of railroad companies organized and incorporated under the laws of this State, including the right to sue, and the liability to be sued, the same as railroads organized under the laws of this State; *provided*, Such railroad corporation shall file with the Secretary of the State of Iowa a copy of its articles of incorporation, if incorporated under the laws of such State, or a certified copy of statute laws of such State incorporating such company where the charter of such railroad was granted by statute of such State."

Also, the following from the Constitution of the State of Iowa:

Section 1, Article 8: "No corporation shall be created by special laws; but the General Assembly may provide by general laws for the organization of all corporations hereafter to be created, except as hereinafter provided."

Section 12, Article 8: "Subject to the provisions of this Article, the General Assembly shall have power to amend or repeal all laws for the organization or creation of corporations, or granting of special or exclusive privileges or immunities, by a vote of two thirds of each branch of the General Assembly; and no exclusive privilege, except as in this Article provided, shall ever be granted."

ARGUMENT OF DEFENDANT IN ERROR.

I.

THE STATUTE IN QUESTION DOES NOT IMPAIR THE OBLIGATION OF ANY CONTRACT.

In considering this question, we will inquire:

First. What contract has the Chicago & Northwestern Railroad Company with the State of Iowa?

Second. What is the contract of the Chicago & Northwestern Railroad Company with the Iowa corporations from whom it claims to hold?

We aver that there is no contractual relations at all between the Railway Company and the State of Iowa.

No contract will be implied as against the State. To be such it must be clearly ascertainable from the language of the law, and to be irrevocable, must be: *First*—Upon a consideration; and. *Second*—Contemporaneous with the creation of the corporation.

In the view we take of the Iowa law, there is no statute of the State authorizing a domestic railroad corporation to sell or lease its constructed road and franchises to a foreign corporation. That any such attempted sale is without sanction or authority in law, and the purchasing company taking thereunder and operating such railroad in Iowa is there simply by sufferance or comity, and cannot claim any protection under a contract with the State, either express or implied.

The laws upon the subject of selling, leasing, consolidation and contracts for running arrangements, and for extensions of domestic corporations into neighboring States, and the extension of the lines of railroads of neighboring States into Iowa, are all set out in full in the foregoing statement as the same now exists in Iowa, and the statutes

thus set out are all the statutes ever enacted upon the subject in Iowa. The act of January 25, 1855, is now in the Code as sections 1275, 1276 and 1277.

These sections were enacted at an earlier day, when the railroads of adjoining States, notably the State of Illinois, had reached the shores of the Mississippi, and Iowa was beginning the construction of its trunk lines westward from the river. There were no systems of railroad then in Iowa, but it, of course, was desirable that the roads being then constructed through the State should have an eastern outlet over the Illinois system, or a southern outlet over the Missouri system. To effectuate this, the three methods were adopted as contained in the three sections referred to:

1st. By authorizing the Iowa companies to consolidate with the companies having connecting lines at the State line.

2d. By authorizing the Iowa companies to enter into contracts for joint running arrangements over these connecting lines.

3d. By empowering the Iowa companies to construct lines of railroad in adjoining States.

There were at the time no connecting roads wholly within the State of Iowa. This is a fact within the knowledge of the court, especially some of the honorable court, who were at the time familiar with the history of Iowa.

The agreed statement, page 16, shows that the Chicago & Northwestern Railroad, or its constituent, the Galena & Chicago Union Railroad Co., was completed to Fulton, in Illinois, on the river opposite Clinton in Iowa, Dec. 16, 1855. It was about this time, or in the spring following, that the Chicago, Iowa & Nebraska Railroad Company began constructing its line westward from Clinton.

The construction of the Mississippi & Missouri River Railroad, now the Chicago, Rock Island & Pacific, was begun westward from Davenport in 1854, and the Burling-

ton & Missouri River Railroad Company began building west from Burlington in 1855.

It was not at that time necessary for the legislature to provide by law for the connection of Iowa railroads, or for the consolidation, lease, etc., of one with the other of such domestic corporations.

Between 1855 and 1864, however, railroads in Iowa had multiplied, and there were numerous lines crossing and intersecting each other, and it became necessary to make provision for these home companies. It was then that the act of March 28, 1864, was enacted; section 4 of which authorized the directors to make contracts of lease or joint running arrangements with connecting roads. There was no mention made in this law, as in the former one, of railroads of other States. The law had already, in section 2 of the act of January 25, 1855, authorized Iowa companies to make contracts for joint running arrangements with such foreign companies, and if this was meant to apply to them also, then it was an useless repetition.

The legislature was familiar with the law of 1855, and if this new law was to authorize leases with foreign corporations as well as joint running arrangements, then it is but reasonable to suppose the legislature would have so enacted, or they would have amended the law of 1855 so as to authorize leases as well as consolidation and joint running arrangements, and extended its provisions to connecting lines of Iowa railroads. It is clear, however, that the legislature had no thought of applying the law to any corporations except those under its control. They were enacting laws for Iowa, for Iowa corporations, and Iowa railroads. They had no authorityto legislate for the railroads of other State; all they could do as to them was to authorize the Iowa companies to make such contracts, if the sister states agreed to it. The law as enacted, however, was a complete authorization in itself, and no concurrent legislation of a foreign State was necessary to make it complete.

It is an error to say that because the act does not say, "any Iowa railroad," instead of "any connecting road," therefore it must must be taken to mean railroads of Iowa or any other State. The converse of this proposition is true. The legislature of Iowa enacts laws *for* Iowa, and if the law is to have any extra-territorial application by contract, or concurring legislation of other States, such design must be expressed. It will be inferred, we insist, that, in the absence of language to the contrary, the construction must be that the law is intended to be domessic only, in its operation. There are cogent reasons too for this discrimination between connections with foreign corporations and connections between Iowa corporations only.

The policy of the State would naturally be to keep its highways of commerce as much under its own control as possible. With the construction which we insist these laws should receive, this, so natural an object, would be fully attained. The State loses no control by authorizing joint ronning arrangements, and, we insist, also loses none by consolidation, as the effect of a consolidatson under the provisions of section 1275 (or the act of 1855) is to create a new corporation out of the constituent corporations, which is domestic in each of the States in which such corporation exists. This has been fully recognized and held by this court in a number of cases; prominently in

R. R. Co. vs. Whitten, 13 Wall., 270; and in

Clark vs. Barnard, 108 U. S., 436.

Graham vs. Boston & C. R. R., 118 U. S.

Muller vs. Dows, 94 U. S., 444.

In the last case cited, the question of citizenship of such consolidated company in Iowa arose upon a consolidation effected under the provisions of this Sec. 1275. It is not stated how such consolidation was effected, whether by purchase or sale or otherwise, nor is it material. Under

the statute whatever method is adopted the result is to "merge and consolidate the stock of the respective companies, making *one joint stock company* of the roads thus connected."

And as stated by the learned justice in *Muller vs. Dows*, "The two companies became one. But in the State of Iowa that one was an Iowa corporation, existing under the laws of that State alone."

It is clear, therefore, that by whatever means the constituent corporations may be merged and consolidated into one joint stock company, the result is the same as to citizenship. There is no other kind of sale or no sale for any other purpose than that of consolidation authorized by this section 1275.

A contract made by such connecting company, as provided in section 1276, also preserves the citizenship of the Iowa corporation in Iowa.

It is therefore clear to our mind that the legislature of Iowa had a distinct intention in these laws to preserve the identity of the Iowa corporations within the State, while providing a means whereby through travel and through freight, might be unobstructedly transported over such lines of railroad.

It is equally clear to our minds that in enacting the statute approved March 28, 1864, the legislature did not intend thereby to authorize Iowa railroad corporations to dispose of their property and franchises to a foreign company, and after having reaped all the benefits conferred upon them by the liberal laws which had created, fostered and aided them, by a simple sale and transfer escape all the responsibilities, and ignore all the duties they were expected and required to perform. Recurring to the foregoing statement, we call the attention of the court to the act of March 25, 1880, being chapter 128 laws of 18th General Assembly. (See page 19 of statement.)

This is another, and still much later, statute providing a means whereby Iowa is to be brought into connection

with the railroads of adjoining States. The court will see that the provisions of the act attempts, at least, to fully and carfully guard the interests of the State, and to provide for State control over the railroads constructed in Iowa by such foreign corporations. It is very clear, from the provisions of these various statutes, that whenever the legislature meant to confer any rights upon corporations of sister States, it found no difficulty in making its intention clearly apparent by its language.

It must, therefore, be apparent to the judicial mind, that section 1300 of the Code, and section 4 of the act of March 28, 1864, were intended to apply only to Iowa corporations. In the preceding statutory enactments, the powers or privileges intended to be conferred upon foreign corporations are expressly referred to as such, and it is a familiar rule of construction which provides that where statutes conferring rights or privileges upon a certain class, naming it, are followed by general statutes in which such particular class is not referred to, it is to be excepted from the provisions of such statute, and neither gains any rights or is barred from any privileges thereby.

We therefore contend that the attempted sale and transfer by these several Iowa corporations of all their property and franchises to the Chicago & Northwestern Railway Company, was unauthorized by any law of Iowa.

Therefore, the State is not precluded by any contractual relations from fixing the terms and conditions upon which this corporation of Illinois may be permitted to do business in Iowa.

Giving to section 1300 of Code as broad a construction as the plaintiff in error claims, viz: That it authorizes Iowa corporations to sell or lease their roads, property and franchises to foreign corporations having connecting lines, and we still say there is no contractual relations existing between such foreign corporations purchasing the road and the State of Iowa.

It will hardly be claimed that the purchasing company

takes more or greater rights under the purchase than belonged to the grantor.

1st. There was no contract of immunity from legislative control in the law under which the Iowa corporations were organized. They were all organized under general laws. The constitution of Iowa has always prohibited any special charters to corporations other than municipalities.

We think the doctrine is elemental that the charter or articles or incorporation of any incorporated company is at all times subject to legislative control *except* as to special privileges or exemptions granted at the time of the creation of the corporation, as an inducement to the formation thereof.

Such special exemptions or privileges are held to be in the nature of contracts, and not subject to repeal or alteration. If, however, any such exemption or privilege is conferred merely as a gratuity and constitutes no part of the inducement to form such corporation, then it is *privilegia favorabilia* and subject to repeal. Such is the doctrine of *Rectors of Grace Church v. Phila.*, 24 How., 300.

Runyan v. Lessees, 14 Pet., 120.

Providence Bank v. Billings, 4 Pet., 214.

Dale v. Governor, 3 Stewart, 387.

Commonwealth v. Bent, 12 Mass., 442.

Judge Cooley says, speaking of legislative contracts in his work on Constitutional Limitations, 5th Ed., page 34: "In any case however there must be a consideration, for it is considered on all sides that if the exemption is made as a privilege only, it may be revoked at any time."

And Judge Redfield in delivering the opinion of the court in *Thorpe v. R. R. Co.*, 27 Vt., 140, says: "The entire power of the legislative control is reserved unless expressly, or by necessary implication, restricted in the charter, and for a consideration. A corporation takes

nothing by intendment but what is necessary to the enjoyment of that which is granted." And Mr. Justice Grier says in *Richmond R. R. v. Louisa. R. R.*: "It is the settled rule of construction adopted by this court that public grants are to be construed strictly." This is eminently true when a corporation claims a grant of immunity or special privilege.

When, however, the constitution or laws reserve the right of control, there can be no question of the power of the legislature to exercise such control and regulation to the full extent of the reserved power.

In the case of the corporation now here claiming exemption from legislative control, there is not only no grant of immunity, but there is a reserved right of control.

The right of control in so far as the main line of the railroad is concerned, was reserved under contract between the original company and the State.

Congress had granted to the State certain lands in trust to aid in the construction of lines of railroad within its borders. The State accepted the trust, and by act of the legislature granted a portion of such lands to the Cedar Rapids & Missouri River Railroad Company upon certain conditions; one of which was that the corporation accepting it should forever remain subject to legislative control. The Cedar Rapids Company was organized under the general incorporation laws of the State of Iowa, and it filed with the Secretary of State its acceptance of this condition, and thereby became bound by it in a most solemn contract. Others of the branch lines, constructed at a later period, accepted aid by way of forced taxation under similar conditions. And, in addition to all this, section 1090 of the Code, set out in the statement at page 17 hereof, reserves in most explicit terms the right of legislative control, declaring that such corporations "shall, at all times, be subject to legislative control: and may be, at any time, altered, abridged, or set aside by law, and every franchise obtained, used, or enjoyed by such corporation may be

regulated, withheld or subjected to conditions imposed upon the enjoyment thereof whenever the General Assembly shall deem necessary for the public good."

This court has affirmed the legislative powers of control which we here invoke, in *C., B. & O. R'y Co. vs. Iowa*, 94 U. S., 162, using the following very explicit language:

"It was within the power of the company to call upon the legislature to fix permanently this limit and make it a part of the charter; and if it was refused, to abstain from building the road and establishing the contemplated business. If that had been done the charter might have presented a contract against future legislative interference. But it was not; and the company invested its capital, relying on the good faith of the people and the wisdom and impartiality of the legislature for protection against wrong under forms of legislative action."

And the court held that the non-user of the legislative power for a series of years is no bar to its use when deemed expedient by the legislature.

The question which this court is to determine is not one of justice or injustice, expediency or inexpediency. It is a question of power.

The reserved power then extends to the right of altering, amending or repealing that which it grants.

Santa Clara vs. Southern Pacific R. R., 13 A. and E. Railway Cases, at p. 204.

It cannot deprive the corporation of its acquired property, of the profits it has earned and the property it has acquired by the profitable use of the franchise. What then is it that the State grants? When this has been determined, then the question of what the State may deprive the company under this reserved power has been solved. Where there is no reservation of control the charter and franchises inhereing therein are protected under the contractual relations existing between the State and the corporation. Such is the rule of the *Dartmouth*

College Case, and the decisions following it, wherein that doctrine is affirmed.

But when the State in granting the charter reserves the right to alter, amend or abrogate it, and the franchises inhereing in it, then there is no contract for its continued use and enjoyment.

By accepting the charter with the reserved power of the State the incorporators consent to the control. We claim that the law in question, chapter 76, acts of 21st General Assembly of Iowa, does not go beyond this—in fact, does not go to that extent. It requires of the corporation a compliance with its provisions, and only deprives it of the exercise of the corporate privileges granted to the Iowa corporations as a penalty for refusing to comply with the law. It does not lay its hand on the acquired property. It does not confiscate the cars, engines, road-bed, stations, or the money earned in the business. It says, you must comply with the law or you must cease to exercise corporate rights. The corporate rights, and the privilege of exercising them, are just what the State granted, and what it reserved the right to control or abrogate. So says Mr. Justice Field in the *Santa Clara Case*.

The condition on which the corporation is permitted to continue in the exercise of its corporate functions, is the same as this court has sustained in *Doyle v. Ins. Co.*

Now this right to control the corporation in the exercise of corporate rights is just such restraint as the State exercises over individuals. An individual has been engaged in the sale of drugs for instance for years. He has built up an extensive trade and has accumulated property. The State enacts a pharmacy law requiring the druggist to pass an examination and to conform to certain regulations which the legislature deems to be for the public good. The druggist must comply with the requirements of the law or cease to sell drugs. The same is true of other lines of trade.

A common carrier in a city has builded up a business

as a local expressman. He has his teams and wagons engaged in the carrying trade. The city imposes a license on his business, and he is required to conform to the regulation or cease to do business.

In none of these cases, however, does the State or the municipality interfere with the property accumulated in the business. That is left to the owner. The penalty for a non-compliance with the law is that the party must cease to engage in the business.

This is all there is of the law in question. It imposes a condition on the future exercise of a *corporate franchise* which the State has retained the right to control.

Munn v. Ill., 94 U. S., *supra.*

If the domestic corporations were subject to this control, then the purchaser was also, for "a corporation which seeks to establish a domicil of business in a State, other than that of its creation, must take that domicil as individuals are understood to do, subject to the responsibilities and burdens imposed by the law which they find in force there."

Attorney-General vs. Mining Co., 99 Mass., 153.

When the Chicago & Northwestern Railway Company purchased the franchise and property of the various Iowa roads it found section 1090 in force, which reserved to the State the right to amend, alter or recind any or all the corporate privileges granted therein. If the purchase was effected under authority contained in section 1300, then the purchasing company became subject to the provisions of section 1090, for section 1300 provides that the company leasing or purchasing any connecting line under the authority of said section, takes the same subject ty the laws of Iowa. This must mean at least that it takes subject to the laws then in force, and section 1090 was then a law of Iowa.

It is a well settled rule that the purchasing company not only takes subject to such reserved right, but that any

special immunities or privileges granted to the original corporation does not pass to the purchaser.

Trask vs. McGuire, 18 Wall., 391.

Memphis R'y vs. Commissioners, 112 U. S., 610.

This case holds very fully that the purchaser of a railroad takes under the laws in force at the date of purchase, and whatever restrictions and reservations there may be at that time reserving the right of control to the State, applies to the purchasing company and not the law as it was in force at the time the charter to the original company was granted. Upon this question the court says: "The State does not part with a franchise until it passes to the organized corporation (that is, the former company), and when it thus is imparted it must be what the government is then authorized to grant and does actually confer."

It is clear, then, that all these various leased and purchased lines of railroad were under some, or all, of these laws, subject to legislative control, and that any grants of privileges made to them under said laws were at any and all times subject to this legislative amendment and revocation. The domestic corporations by their sale or lease to foreign corporations could not divest the State of this reserved control. They could not confer upon the grantees or lessees immunities which they did not themselves possess.

Peik vs. N. W. R'y Co., 94 U. S., 164.

C., B. & Q. R'y Co. vs. Iowa, Ib., 155.

In the latter case the court, at pages 162-3, uses this language: "The company could not grant or pledge more than it had to give. After the pledge and after the lease the property remained within the jurisdiction of the State and continued subject to the same governmental powers that existed before."

That which the Iowa corporations granted and pledged

to the Chicago & Northwestern Company was the title to its tangible property and the use of its franchises, subject to the laws then in force or such as might thereafter be enacted.

See, also—

Holyoke Co. vs. Lyman, 15 Wall., 500.

Sherman v. Smith, 1 Black., 587.

Thorpe vs. Railroad, 27 Vt., 140.

Speaking of this reserved control, Mr. Justice Redfield, in the last case cited, says: "No question could be made where such a requisition was contained in the charter of the corporation or the general laws of the State at the date of the charter." But he goes farther (for in the case he was considering no such reservation had been made in the charter or the general laws) and says, applying the law to the facts in that case: "But where neither is the case, it is claimed that it is incompetent for the legislature to impose such an obligation by statute subsequent to the charter." He then shows by the most conclusive reasoning that the legislature of the State not only has this power of control, even in a case where no reservation existed in the charter or general laws at the time, but that it is not within the power of one legislature to divest a subsequent one of this power. That while the right of taxation may be bartered away, and exclusive monopolies granted when the law clearly amounts to a contract, this police power, which is held for the well being of society, cannot be bartered away. I ask the attention of the court particularly to this strong and well-reasoned case.

See, also—

Richmond & R. R. R. vs. The Louisa R. R., 13 How., 71.

Cooley's Const. Lim., 5th Ed., 710, note 1 and 342.

Beer vs. Massachusetts, 94 U. S., 25.

Boyd vs. Alabama, 97 U. S., 645.

Moore vs. State, 48 Miss., 147.

Bank vs. Barrie, 34 N. Y., 607.

O. & M. R. R. vs. McClelland, 25 Ills., 142.

The case of *Beer Co. vs. Massachusetts, supra*, is very analagous to the case at bar. There the legislature had chartered the corporation, the plaintiff in error, for the one purpose of manufacturing beer. No license to so manufacture was required at that time. There were no restrictions on the manufacture. The right of future control was reserved in the general laws, and the corporation chartered was made subject to such general laws. This charter to Beer Company was granted in 1828, and it continued to invest money, and manufacture and sell beer until 1869, a period of forty-one years. Undoubtedly in that time it had acquired vast property interests, much of which would be worthless for any other purpose. In 1869, however, a law was passed prohibiting the sale within the State of the beer so manufactured. This the court holds the legislature had the full power to do under this reserved right of control.

It deprived the corporation of the future right to manufacture and sell except for certain uses. It did not confiscate its property, or seek to deprive the corporation of it. It may have rendered it less valuable, but it left it vested in the corporation. No guarantee can be given that property will retain any fixed value. The shifting laws of trade and commerce, as well as the municipal laws enacted from time to time, seriously affects fixed values.

What obligation of contract does this law impair?

The law provides that all corporations foreign to Iowa, as a condition on which they may exercise corporate rights in the State shall—

First. "File with the Secretary of State a certified copy of their articles of incorporation."

This certified copy is to be accompanied by a resolution of the board of directors or stockholders authorizing such filing; and,

Second. Authorizing service of process to be made on ano of its officers or agents in this State engaged in transacting its business.

Thirh. Requesting the issuance to it of a permit to transact business in this State.

Fourth. It must contain a stipulation that said permit shall be subject to the provisions of the act.

The further provisions are:

Fifth. That without having filed the certificate and resolutions with the required stipulations, and without having taken out the permit, the corporation shall not "hereafter be authorized to exercise the power of eminent domain." Nor shall it be permitted "to exercise any of the rights and privileges conferred upon corporations."

Sixth. After such permit has been granted, if any such corporation is sued in the courts of the State—

(*a*) Upon any contract made or executed in this State, or to be performed in this State.

(*b*) Or if it is sued in the courts of this State, "for any act or omission, public or private, arising, originating, or happening in the State, and shall remove such case to the United States courts for the reasons mentioned in section 3 of the act, then such corporation will forfeit its permit and not be entitled to receive another for three months thereafter, "unless the Executive Council for satisfactory reasons cause it to be issued sooner."

Which of these provisions impairs any contract between the State and these companies?

Have they any contract which exempts them from filing with the Secretary of State a copy of the charter of their existence? The State certainly has a right to know whether or not the persons in control of its highways of commerce have any legal existence; such an existence as that they may be made liable for contracts with, or

or injuries to citizens of the State. The filing of these articles gives the required information on these points, and deprives the company of no property or property rights.

It is then the second requirement. The State certainly has the right to so provide that foreign corporations doing business within its limits may be sued, and to declare what kind of process shall be served and on what agent of the corporation.

At one time all such processes had to be served upon a general officer. At another time upon any officer or general agent, or any freight or station agent. This simply enlarges the number of agents on which service may be made in order to bring the party into court. It could be enacted just as well and be valid and binding without such stipulation being filed. Surely then the filing of this stipulation with the articles is no impairment of the obligations of a contract, or divestiture of vested rights.

Does the impairment consist in the fact that the corporation is required to obtain a permit? There is no contract of exemption from such requirement, and it cannot be said that it is taking any of their property from them to have such permit. If the Secretary should refuse to issue it after compliance with the law he could be compelled to do so by mandamus. Without this permit it cannot exercse the right of eminent domain. There is no vested right in a corporation to have the right of eminent domain. The State can refuse to grant it at any time, or having granted it may revoke it. Even enterprises of the most public nature cannot exercise it without grant from the State.

The same is true of corporate rights, unless the privilege amounts to a contract, and we have shown that it does not in so far as Iowa corporations or their assigns are concerned.

It is useless to spend time on these questions. We will come directly to the point that causes all this controversy, viz.: That in order to obtain this permit the corporation

must accept, and agree to be bound by the provisions of the law that they will not remove certain cases to the United States courts.

Now, what obligation of contracts does this impair? No person, natural or artificial, has a vested right in a particular remedy or a tribunal. Either of these may be changed at any time, and so long as a substantial remedy exists, and there is a competent tribunal by which the remedy can be enforced, there is no impairment of the obligation of a prior contract. This is so well settled that it requires no citation of authorities. No person can have a contractual right in a remedy or tribonal.

They can neither secure such right by contract or barter it away by contract

Morse vs. Ins. Co., 29 Wal., 445.

Coming right to this point we state our proposition in this way: A State legislature possesses no power to prevent those doing business within the territory of the State from resorting to the United States courts in any or all cases where such right is guaranteed to them by the constitution of the United States or the laws of Congress enacted in compliance therewith.

But the State may in the exercise of that absolute sovereignty which resides in it dictate the terms and conditions under which corporations of other States may come into, or continue to transact business within its jurisdiction, and it "may compel the foreign company to abstain from the Federal courts, or cease to do business in the State."

Hunt, J., in *Doyle vs. Continental Ins. Co.*, 94 U. S., at page 542.

This last case is decisive of every claim that can be made by the complainants in respect to their inherent or vested right to sue and be sued in the United States courts. But the complainants say: When we came into

the State and purchased our property no such conditions were imposed; this is an additional burden, and the permission to do business in your State when accepted by us became a contract that no such additional burdens would be imposed.

It is hardly necessary to say that this doctrine is not maintained by the adjudicated cases of the States or of this court.

It is the same claim that was made in *Thorpe vs. R'y Co.*, 27 Vt., cited *supra*. It is the same claim that was made in the Iowa courts in *Fuller vs. R'y Co.*, 31 Iowa, 187, there decided adversely, and affirmed by this court in 17 Wal., 560. And in *C., B. & Q. R'y Co. vs. Iowa*, affirmed in 94 U. S., 155.

The same claim was made in *Pieck vs. C. & N. W. R'y Co.*, and decided by this court on appeal from the Supreme Court of Wisconsin. See 94 U. S., 164.

In each of the cases referred to the property rights of the corporations were much more seriously impaired than they are in the cases at bar.

In *Doyle vs. Ins. Co., supra*, it was claimed that, prior to the enactment of the statute requiring insurance companies to take out a permit or license, and imposing as a penalty for the transfer of causes brought against it in the State courts of Wisconsin, to the United States court, a revocation of such license and all authority to do business within the State, the company had invested money in the State and had acquired vested rights therein which the legislation in question operated to impair, and that it therefore contravened the provision of the Constitution. The court says: "The correllative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a State is always revocable. The power to revoke can only be restrained, if at all, by an explicit contract and upon good consideration to that effect. A license to a foreign corporation to enter a State does not involve a permanent right to remain subject to

the laws and Constitution of the United States. Full power and control over its territories, its citizens, and its business, belongs to the State."

"The effect of our decision in this respect," the court goes on to say, "is that the State may compel the foreign company to abstain from the Federal courts, or to cease to do business in the State. It gives the company the option. This is justifiable, because the complainant has no constitutional right to do business in that State; that State has authority at any time to declare that it shall not transact business there. This is the whole point of the case, and without reference to the injustice, the prejudice or the wrong that is alleged to exist, must determine the question."

In the case of *Railroad Co. vs. Fuller, supra*, it was contended that an act of the legislature of Iowa requiring railroad companies to annually fix its rates of transportation, etc., was in conflict with the constitution, and the court says that being merely a police regulation, the act in question was valid, at least until it should be superseded by the paramount action of Congress. In that case, as in this, there were penalties affixed for a refusal to comply with the law, and the effect of the penalty, as a means of enforcing the law there, as here, would be to deprive the corporation of a part of its property. So do all penal laws, whether applied to persons or corporations - and corporations are no more exempt from penal laws than are natural persons.

In the case of *C., B. & Q. R'y Co. v. Iowa, supra*, it was shown that the complainant was the lessee of the B. & M. R'y Co., an Iowa corporation; that the B. & M. Co. had been built largely upon borrowed capital; and that under the laws of the State of Iowa at the time the B. & M. Co. was organized, built its road and borrowed money, the company had the right to fix its own tariff rates, which right was set over to complainants. It was said in argument that the persons loaning the money did so under be-

lief that such right of the company to fix rates would not be interfered with.

The court says: "The company was organized under the general corporation law of Iowa, with power to contract the same as private individuals * * * but being subject at all times to such rules and regulations as the General Assembly of Iowa might from time to time enact and provide. This is in substance its charter, and to that extent it is protected as by a contract. * * * If it could (exercise the power) the legislature must decide for itself, subject to no control for us, whether the common good requires it should be done."

In *Paul v. Virginia*, 8 Wal., 168, it is said that a corporation carrying on business in a foreign State, and therefore entitled to the privileges of a citizen, must at the same time take upon itself the liabilities of a citizen, otherwise they would gain privileges not enjoyed by citizens and deprive the State of all control over the extent of corporate franchises proper to be granted therein. And further, that the recognition of a foreign corporation in another State is a mere matter of comity, and never extended when the exercise of power is prejudicial to their interests or repugnant to their policy. The whole matter rests in the discretion of the State. Otherwise business would soon be controlled by corporations of other States.

In *Railroad vs. Maryland*, 21 Wal., 456, it is decided, that a State has all plenary power over its own territory, highways, franchises and corporations, and this, through the exercise of the power, may incidentally affect transportation.

See, also:

Rector vs. Phila., 24 How., 300.

People vs. Roper, 35 N. Y., 629.

People vs. Commissioners, 47 N. Y., 50.

Humphrey vs. Pegues, 16 Wall., 244.

Tomlinson vs. Jessup, 15 Wall., 454.

If it should be claimed that the contract between these companies and their lessors and grantors is impaired, then we ask in what does the impairment consist? The tenure of neither their lease or purchase is affected. They are shorn of none of their property rights. Not one of their legal remedies are taken away. Every law enacted for their protection and the enforcement of their rights remain *intact.*

The same courts are open to them that are open to every citizen of Iowa in controversies with his fellow men. The same remedies can be enforced in these courts as in the courts of the United States. The same rules of practice are to be observed in the one as in the other. The decrees and judgments of the one is just as binding as are the decrees and judgments of the other, so, even if they had a property right in a remedy and the methods of administering it, they would not be deprived of it.

It cannot be claimed that an observance of the law would detract from their earnings or in any way injuriously affect their profits. While this was the case in the cases cited, to-wit, *Peik vs. N. W. R'y; C., B. & Q. vs. Iowa*, and other cases it is not so here.

In the case of *C., B. & Q. vs. Iowa*, as has before been intimated, the plaintiff in error complained that the law of Iowa, fixing its maximum rate, would so seriously detract from its earning capacity as to render it impossible for it to comply with the terms of its contract with its lessor. That it had agreed, out of the earnings to pay the interest on the mortgage debt, and that if the State could cripple its earnings by fixing unremunerative rates, it could not hence comply with this requirement of the contract.

This court held in language already quoted that this did not impair any obligation of contract. That the domestic company was organized under a law reserving this right and the purchaser, or, as it then was, the lessee,

could not be heard to complain of the exercise of that reserved control.

A very strong case wherein this same doctrine is announced will be found in *Indianapolis R. R vs. Kincead*, 16 Ind., 84. It was provided by the charter of the company in that case that:

"No person, body corporate or politic, shall in any way interfere therewith, molest, disturb or injure any of the rights and privileges hereby granted, or that would be calculated to detract from or affect the profits of the company."

The court say that this would perhaps have been equally so had the statute been silent on the subject, but, says the learned judge:

"How a requirement that the company should fence its road, or pay for stock killed on it detracts from or, affects the profits of the corporation, the counsel for appellant has not informed us." It requires no very great intellectual strain to see that the requirement to pay for stock killed, and to fence roads, would detract much more from the profits of the company, than would a requirement that the legal controversies shall be settled in the courts of Iowa, unless this court is going to presume that the courts of Iowa are not going to deal fairly with the corporations.

3d. The plaintiff in error by his counsel complains that the corporation is by this law deprived of the use of its property, which it has acquired under license from the State.

The same complaint was made by the defendant in error in *Doyle vs. Continental Ins. Co.*, but this court did not consider that such claim was well founded, for, as before quoted, the learned Justice delivering the opinion says: "A license to a foreign corporation to enter a State does not involve a permanent right to remain subject to the laws and Constitution of the United States. Full power and control over its territories, its citizens, and its business belongs to the State." And in the language of the Su-

preme Court of Massachusetts, in *Attorney-General vs. Mining Company:* "The State may deny to foreign corporations the right to transact their business, hold property, or exercise any corporate functions whatever within its limits. Or it may permit them to exercise such privileges upon terms prescribed by law. The provisions of the statute in question are founded upon this right of exclusion or conditional admission. *Exclusion is the remedy provided to enforce compliance.*"

The objections of the defendant in error to the law of Iowa is fully answered in this language of the learned judge in Massachusetts. They are only excluded from the enjoyment of their property as a penalty for refusing to comply with the law.

"It is the remedy provided to enforce compliance," and it is a remedy (which this court has said in *Doyle vs. Ins. Co.*) "is justifiable, because complainant has no constitutional right to do business in that State," and "the correlative right to *revoke* or *recall* a *permission* is a necessary consequence of the main power," and "this is the whole point of the case, and without reference to the injustice, the prejudice or the wrong that is alleged to exist, must determine the case."

There is no unlawful or unauthorized taking of property or impairment of contract in this case upon part of the State.

4th. Special privileges and exemptions to a corporation are personal to the corporation to which the grant is made, and do not pass to a purchaser. So an exemption from taxation does not pass to the purchaser even under sale in foreclosure of a mortgage given to secure the funds necessary for the construction of the road, and where the mortgage in terms covered the franchises. It is only the "franchises" which pass with the property, and these franchises do not include special privileges or immunities. They cover only such "rights or privileges as are essential to the operation of the road."

Morgan vs. Louisiana, 93 U. S., 217.

We do not think it is "essential to the operation" of a railroad that the corporation should retain the right to sue or be sued in any particular tribunal, especially while other and competent tribunals are open to it.

The question comes back therefore, has the legislature power to exclude foreign corporations from doing business or exercising corporate functions in the State? There can no longer be any question on this point. That question is fully settled in the affirmative by a long line of decisions in this court, and is fully concurred in by the rulings of the several State courts.

A corporation presupposes a grant of existence and power from a sovereign. The grant of power by a sovereign, by its own inherent force, is operative only within the dominions over which the authority of the sovereign extends. In any other State it must act if at all by the permission of the sovereign power of such State.

Bank of Augusta vs. Earle, 13 Pet., 129.

Runyan vs. Lessees, 14 Pet., 12 Pet., 129.

Lexington vs. Shepard, 20 How., 232.

Fire Association vs. New York, 7 Sup. Ct. Rep., 108.

Paul vs. Virginia, *supra*.

Doyle vs. Cont. Ins. Co., *supra*.

III.

How does this law impair the obligation of contract between the C. & N. W. R'y and the corporations from which it purchased?

There is nothing in the contract guaranteeing that the purchaser would be exempt from future legislative control. It would not be competent for the companies to so contract. Nor could the grantor company convey to the grantee any further or greater privileges than it was itself possessed of. So this right to litigate its cases in

the courts of the United States was not a part of the contract.

The plaintiff in error sets up in his petition that the C. & N. W. had mortgaged its road for a large sum of money, and that this law impairs that contract.

The same question was raised in *C., B. & Q. vs. Iowa, supra;* but this court disposes of it in a few very well directed sentences.

IV.

The act in question does not amount to a regulation of commerce between the States within the meaning of the Constitution of the United States.

It is not every law indirectly affects commerce that can be construed to amount to a regulation thereof. There are many laws of the States that from their nature and operation must indirectly operate on commerce, sometimes even embarrass it, that do not amount to an interference with the exclusive domain of Congress over this subject.

This doctrine is now fully settled by this court in a long line of decisions, among which we cite:

State Tax Cases, 15 Wal., 284.

Peik vs. N. W. R'y, 94 U. S., 164.

Munn vs. Illinois, 94 U. S., 113.

Cushing vs. Ship John Frazier, 21 How., 184.

Osborne vs. Mobile, 16 Wal., 479.

Sherlock vs. Alling, 93 U. S., 99.

Telegraph Co. vs. Telegraph Co., 96 U. S., 1.

Paul vs. Virginia, 8 Wal., 168.

Wooley vs. Wardens, 12 How., 99.

Gilman vs. Philadelphia, 3 Wal., 713.

In all these cases the State laws did in one way or another, and to a greater or less degree in some cases, directly, and in others indirectly, operate upon commerce,

either foreign or as between the States.

This court, however, held they did not conflict with the Constitution.

While the State cannot perhaps restrict contracts between its citizens and those of other States in relation to commerce, either as a question of traffic or transportation, we insist that the State may decide whether or not it will consent to have its highways of commerce transferred by corporations of Iowa to corporations of other States; and if it does so consent, that it can say on what terms such transfers and control shall be made by the one and exercised by the other. The State of Iowa granted valuable and important franchises to corporations organized under its laws; endowed them with the sovereign right of eminent domain and the right of forced taxation in aid of their enterprizes, and authorized them to construct highways of commerce within the State. These roads so constructed were essentially public highways. It was by reason of this that the State had authority to grant to them the right of eminent domain. And it is conceded in the statement of facts that the corporations constructing these various lines of Iowa railroads each exercised that right, were necessary so to do, in obtaining right of way. They thus became the trustees or agents of the State in the operation and control of such public highways, and therefore subject to legislative control.

It is an alarming doctrine now advanced by the defendants in error, that the State having given life to these artificial persons, and made them its agents to control and operate its highways under proper legislative restriction, and regulation, now finds that it has taken upon its shoulders the "old man of the sea" and can no longer control its creatures. We insist that under no precedent of this court, nor upon any principle ever enunciated by it, can it be claimed that the State is powerless to prevent corporations of other States, from taking possession of, operating and controlling, its public highways. To so

prevent them does not constitute a regulation of commerce between the States. The very law that the defendant in error pleads, as the authority under which it was authorized to purchase railroads in Iowa, precludes Iowa railroads from doing the like in Illinois.

If a law of the State of Iowa, declaring on what terms foreign corporations may control its railroads, is a regulation of commerce, then the law of Illinois, relied on by him as authority to purchase railroads in Iowa, is also, and for like reasons a regulation of inter-State Commerce. It is the accepted rule by courts and legislative bodies that corporations must

First. Derive their powers from the sovereign creating them.

Second. That they can have no power to act or acquire property in a foreign State except as authorized by the laws of such State.

Third. They cannot acquire a domicil of business in a foreign State without the consent of such foreign State.

Fourth. If such consent is given, it may be upon such terms and conditions as the foreign State may see fit to impose.

These four propositions may be stated in one, viz:

The capacity of a corporation to enter into legal transactions depends both upon its constitution as contained in its charter, or the laws under which it is organized, and the law of the State where it proposes to transact business.

Dacy on Domicile Rule, 43.

2 Lindley on Part. and Companies, p. 1486.

Bramley vs. S. E. R. R. Co., 12 C. B., N. S., 63.

Runyan vs. Coster, 14 Pet., 120.

Christian Union vs. Yount, 101 U. S., 353.

Although a corporation "must dwell in the place of its creation, and live and have its being in that State only,

yet it does not follow that its existence *there* will not be recognized in other places; and its residence in one State creates no insuperable objection to its power of contracting in another. But it must show that the law of its creation gave it the authority to make such contract."

Runyan vs. Coster, supra.

It is because of this rule of law, so well and so fully settled, that the defendant in error pleads the law of Illinois authorizing the C. & N. W. R'y Co. to purchase or lease railroads in other States. But it will not be contended, that this law of Illinois authorized its corporations to purchase or lease, or having purchased or leased, to hold, other roads in foreign States despite the laws of such foreign State. The legislature of Illinois in the passage of this law recognizes the rule to be, that the State may prohibit foreign corporations from purchasing, leasing or controlling its railroads. And this is no regulation of commerce.

The learned counsel confounds two powers, that in their nature and essence are distinctly different, viz, control of commerce, and control of corporations. One is traffic, the other the instrument of traffic. The one is a transaction, the other is the agency of the transaction. Over the transaction the power of the Federal government is supreme. Over the agent the power of the State is supreme. That is, to the extent, at least, of determining upon what terms, if at all, the corporation, being such agent, shall reside and exercise corporate rights within the State. "The two governments have supreme authority, within their respective spheres, and within them neither can interfere with the other."

Santa Clara Co. vs. R. R. Co., 13 A. and E. R'y Cases, at page 184.

The State has the inherent right to control its own highways, and over these the federal government has no

control. The State has never surrendered this power to the general government, nor is the power denied to the State by the Federal Constitution. It is therefore reserved to the State.

10th amendment to Constitution.

The federal government has supreme control over national highways. It then becomes important to determine what are National and what are State highways. When this is determined the question is practically solved.

We maintain that railroads are highways of the State wherein they are constructed and not of the federal government. When the right of eminent domain is conferred on a railroad corporation to construct a railroad in a State it is conferred by the State legislature and not by congress.

It is the sovereignty of the State with which the corporation is clothed in condemning private property, and not the sovereignty of the federal government. When the congress of the United States decided that it was to the interest of the government to have a highway of commerce from the Atlantic to the Pacific it granted a charter to a corporation to construct it. Not, however, from the Atlantic to the Pacific, but from the Missouri river to the eastern boundary of the State of California. Nebraska, Utah and Nevada were then territories. So congress could authorize the corporation to condemn private property within those territories. But congress did not attempt to confer that right upon a corporation to construct a railroad in California. That State granted a charter to the Central Pacific Company from the western to the eastern boundary of that State. It was the same with the Atchison, Topeka & Santa Fe Railroad, which connects with a California corporation at the eastern boundary of that State.

These territorial railroads are highways of the federal

government. The Central and Southern Pacific Railroads are highways of the State of California. The public roads, county and State roads, are highways of the State. The turnpike roads constructed by corporations of the State are State highways, and over these congress has control.

The State cannot interfere with, or regulate, or impose the transportation of commerce from foreign States passing over their roads, or lay any embargo, or tonnage, or privilege tax tax on it. But does it follow from this that the State cannot prevent the corporations of other States from exercising corporate control and management over these State highways?

Does it prevent the State from saying on what terms any corporation, foreign or domistic, may be permitted to possess and operate these roads?

Does it prevent the State from taxing the interest of the corporation in such railroads, and the tangible property thereof, and of selling such property to pay such taxes if suffered to remain delinquent?

Such sale would have the effect, when complete, to take the property from the corporation and to prevent it from further controlling the railroad.

Would this be a regulation of commerce, simply because, while under the control of the delinquent corporation, commerce had been carried on over these lines of railroad?

The Chicago & Northwestern Railway Co. has mortgaged the road-bed, and the rolling stock, and other property of the corporation, used, and necessary to be used, in operating the road, and transporting commerce, so says defendant in error in his petition.

Suppose the railroad company fails to pay the interest, or principal of this mortgaged debt, and the mortgage is foreclosed, and the road sold, and the corporation refusing to deliver up possession of the property, the sheriff had seized the same, or arrested the agents for contempt, would this have been considered a regulation of commerce?

The writ issues by authority of the State. The sheriff in seizing the property or arresting the agent, acts as the officer of the State. Is this a regulation of commerce on part of the State?

It as completely takes from the corporation its property and prevents it from operating the road, and exercising over it corporate privileges, as does the enforcement of this law now in question. Wherein then can the one be said to be a regulation of inter-State commerce, and the other not?

The ready reply of the defendant in error will be, that the foreclosure and sale is a consequence of the refusal of the corporation to pay its lawful debt. What made the debt lawful? Was it not the statutes of the State? Why then is not the statute which provides for the foreclosure and sale in case of refusal to pay a regulation of inter-State commerce? It has the effect to obstruct and impede commerce as fully as does the law in question.

It is not a regulation of inter-State commerce, simply because it is the means of enforcing the law; the means of compelling obedience to the law. So is that part of the statute in question which declares that the foreign corporation, refusing to comply with the law, shall cease to exercise coporate rights.

Neither the one or the other of these laws, are laws regulating, or seeking to regulate commerce.

If the law is one which the State has the power to enact. If the condition is not such an one as the State is prohibited by the constitution to impose, then it is not the law, which interferes with, or obstructs commerce. The obstruction comes from disobedience to law.

The cases already cited fully sustain us in our contention that the condition in this law is such as the State may exact.

The learned counsel in presenting the case to the State court, cited numerous decisions of this court arising out

of commercial transactions upon the high seas and navigable rivers.

These are national highways as distinguished from State highways. They are natures highways, which exist independent of any State action. The State neither constructed them, nor authorized their construction. They are free to be navigated, by any and all who desire to do so. No corporation has control of them, or any exclusive right to their use. No tolls are required from those carrying commerce over them. Their control is by the constitution exclusively in the federal government. And at an early day in the nation's history, Congress assumed control and regulation in respect to their use and navigation. This disparity of circumstances between the one and the other of these different highways, has frequently been recognized and referred to by this court. Notably so in *Balt. & Ohio R. R. vs. Maryland*, 21 Wal., 426, where Mr. Justice Bradley says:

"Commerce on land between States is so strikingly dissimilar, in many respects, from commerce on water, that it is often difficult to regard them in the same aspect in reference to the respective constitutional powers and duties of the State and Federal governments. No doubt commerce by water was principally in the minds of those who framed the constitution although both its language and spirit embrace commerce by land as well. Maritime transportation requires no artificial roadway. Nature has prepared to hand that portion of the instrumentality employed. The navigable waters of the earth are recognized public highways of trade and intercourse. *No franchise is needed to enable the navigator to use them.* Again, the vehicles of commerce by water being instruments of intercommunication with other nations, the regulation of them is assumed by the national legislature. So that interference with transportation by water, and especially by sea, is at once clearly marked and distinctly discernable. *But it is different with transportation by land* * *. No

one at that day (when the constitution was adopted) imagined that the roads and bridges of the country, except where the latter crossed navigable streams, were not entirely subject, both as to their construction, repair and management, to State regulation and control. * * It is simply the exercise by the State of absolute control over its own property."

We do not mean to be understood as claiming that the United States may not in the exercise of its powers to regulate commerce, take charge of and control artificial highways running inter-state, in so far as transactions of commerce between the States is carried on over such highways, but we do say that the federal government cannot control such highways so as to use them indiscriminately for State and inter-state commerce. Its powers are confined to the control of the inter-state commerce only.

We further contend that while the Federal Government may itself assume this control in regard to inter-State commerce, it cannot delegate that power over State highways to other States, or to the corporations of other States. It cannot say to Iowa: You shall permit the corporations of Illinois to acquire and control and operate your local railroads which connect at the border with the railroads of Illinois.

Much less can the State of Illinois by statute authorize its corporations to do so, except by consent of Iowa.

The Federal Government can, as it has recently done, provide by law for the control of commerce between the States, carried over these inter-State railroads, where it finds a corporation, either by purchase, lease or consolidation, operating lines which run inter-State. But it cannot compel connecting roads to lease or sell one to the other. Nor can it compel them to consolidate one with the other. Nor can it require one State to permit the corporation of another State to control the use of railroads therein. It probably may so control commerce between States as to require connecting roads at State lines to receive freight

and passengers one from the other and transport them at reasonable rates. But I apprehend it will not be contended that it can compel the railroad corporation of one State to permit the corporation of another State to use and control its line of road.

My learned friend on the other side will not admit that if a corporation of Iowa desired to purchase and control a railroad in Illinois, that it could do so despite the law which he quotes in the statement of facts. If the State can meet the corporation at the line and say to it, "thus far shalt thou come and no further," it can fix the conditions on which it shall remain after once admitted. The one power is the corollary of the other. "A mere license is always revocable," says Mr. Justice Hunt, speaking for this court.

The extent of the rights of a corporation engaged in commercial transactions to do business in a State foreign to its domicil is limited to transactions eminating from such domicil.

It cannot insist upon the right to migrate into another State, and there acquire a domicil of business and become a "person" under the laws of such foreign State, endowed with all the individuality of a natural person.

Fire Association vs. New York, 7 Sup. Ct. Rep., 108.

For, as said in *Augusta vs. Earle*, "A corporation is considered an artificial being, existing only in contemplation of law; and being a mere creation of law, it possesses only those properties which the charter of its creation confers upon it, either expressly *or as incidental to its very existence*.

It can have no legal existence outside of the sovereignty by which it is created.

It cannot migrate to another sovereignty to enable it to do business or acquire property in another State. It must show that the law of its creation gave it authority to make such contracts.

The contract eminates from the domicil, and in its enforcement relates back to such domicil for authority to make it.

To enable it to become domiciled in a State foreign to its creation, it must have not only the permission of the State creating it, but the sanction of the State wherein it seeks another domicil.

While the foreign State cannot exclude the corporation to the extent of destroying the effect of its *contracts* entered into in conformity with its chartered powers, it can exclude it from becoming a resident of the State, for it has none of the rights of citizenship conferred by the constitution of the United States.

It can contract in the exercise of commercial transactions by relation from the place of its domicil, for "as in the case of natural persons, it is not necessary that it should actually exist in the sovereignty in which the contract is made."

Runyan vs Lessees, supra.

So the railroad companies of Illinois may, under the authority of the laws of that State and of Iowa, make contracts for the through shipment of freight and joint running arrangements, and thus mutually carry on and transact inter-State commerce. It does not follow, however, from this, that because the laws of Illinois creates a corporation to do business as a common carrier, and by law authorize it to carry on that business in a sister State, that therefore the other States of the Union are bound to recognize the laws of Illinois, and permit its corporations to exercise *corporate* rights in such State to the extent of acquiring the control of the highways of commerce therein.

As well might it be said that such foreign corporations, because they are engaged in carrying commerce, may take possession of the State and county public roads and exercise corporate control and supervision over them. The railroads are nothing but public highways.

And in the language of Mr. Justice Bradley, in *Baltimore & Ohio Railroad vs. Maryland*, 21 Wallace, 456.

"This unlimited right of the State to charge or authorize others to charge toll, freight or fare for transportation on its roads, *canals and railroads, arises from the simple fact that they are its own works or constructed under its authority. It gives them being. It has a right to exact compensation for their use. It has a discretion as to the amount of that compensation. That discretion is a legislative—a sovereign discretion—and in its very nature is unrestricted and uncontrolled.*"

It is because of this sovereign and unlimited control over these roads as highways of the State that we insist the legislature has the power to say upon what terms and conditions a foreign corporation may acquire by purchase or otherwise, and hold and operate such highways.

We say, therefore, in so far as this question of inter-State commerce is concerned, there is no difference between the right of the State to impose restrictions as a condition of admission and to require submission to such restrictions as a right to remain after admission, and if the State could prohibit the purchase of Iowa railroads by foreign corporations without a violation of clause 3 and 8 of article 2 of the constitution, it could prohibit them from operating such railroads after purchase without any violation of said section. It might be otherwise with respect to the provisions of section 10; but surely a law prohibiting a foreign corporation from acquiring and controlling a highway of commerce, is no more a regulation of commerce, than is a law which restricts its use after acquisition.

This right of the State to control the railroads constructed under charters granted by its laws arises from the primary fact, as stated by Mr. Justice Bradley, and quoted above, viz.: "That they are its own works, or constructed under its authority. It gives them being."

There is no analogy between this case wherein the State

asserts its right—its sovereign right—to control foreign corporations in this ownership or occupancy of its "own works, constructed under its authority," and an attempt on the part of the State to prevent a commercial corporation of anoteer State from transacting inter-State commerce in Iowa.

There is no analogy between this case and the case of *Gibbons vs. Ogden*, wherein the State of New York attempted to regulate the navigations of the Hudson river.

There is a broad field of difference between saying to a commercial corporation of Illinois, "you shall not establish and maintain a commercial house in Iowa," and saying to such corporation, "you shall not purchase and operate the railroads of the State which are engaged both in domestic and inter-State commerce. You shall not *own* and *control* the State's highways of commerce."

There is a broad field of difference between saying to a corporation acting as a common carrier with its wagons and teams "you shall not drive your wagons over our highways, and carry thereon commerce between the States," and saying to such corporation "you shall not have and exercise corporate control over these highways."

Between saying to the steamboat corporation "you shall not navigate the rivers of Iowa" and saying to the railroad corporation, "you shall not *own* and *operate* the railroads of the State."

It is the well settled rule as stated in *Baltimore & Ohio Railroad vs. Maryland*, and recognized in *Peik vs. Northwestern Railway*, and *Chicago, Burlington & Qincy vs. Iowa*, that the State has the right to fix the rates of freight and passenger fare from point to point within the State. Suppose the State should do this, and as a penalty for non compliance, should provide that a corporation so refusing should forfeit its right to exercise corporate franchises in the State.

Would this be a regulation of inter-State commerce?

If not, then wherein is the difference between that case and the one at bar?

We have examined the case very carefully in the light of the decisions of this court, and are honestly unable to see wherein the *law* is a regulation of commerce between the States.

V.

The point made by the plaintiff in error, that the law is void because it is an attempt to deprive them of the rights guaranteed to them by the constitution and laws of the Federal Government, viz: the right to remove causes from the State to the Federal courts, is fully answered and disposed of by this court in *Doyle vs. Continental Insurance Company*, and we do not deem it necessary to attempt to supplement the conclusive reasoning of the court as given in the language of the learned Justice who wrote that opinion.

One thing only may be here said: The law was not enacted because the legislature of Iowa believed that the citizens of the State could not get justice administered in the United States courts, but from the fact that in most cases the cost of procuring justice in such courts was to them so great, as to amount in the end to a practical denial of justice.

The State has granted franchises to domestic corporations, authorizing such corporations to construct, maintain and operate these dangerous kinds of highways, and has provided by law that for certain kinds of damages, the corporation so constructing, maintaining and operating them shall respond to the person damaged.

These persons thus created by the State were so far citizens as to have the right to sue and be sued in the courts of the State in all actions between them and other citizens of the State. They could not as against such citizens invoke the jurisdiction of the United States courts. In this respect then these two classes of citizens were on an

equal basis before the law. A citizen of any county through which any part of the road of these corporations might be, could sue in the courts of his own county, and without any great expense, either of time or money could have his claims legally adjusted.

These persons, however, which the State had created, sell and lease their roads to corporations, not organized in Iowa; not citizens of this State, but citizens of States foreign to Iowa.

The citizen of a county through which the road runs now finds, that when he has a demand against the corporation he cannot have it legally adjusted in his home forum. The railroad company has its headquarters in the cities wherein are located the United States courts. Its attorneys are there. It can litigate there much cheaper than it can if its cases are scattered over the counties along its line. It has this advantage over the old domestic corporation. But how is it with the other citizen whose rights have been invaded? He is perhaps hundreds of miles distant from the United States court. His witnesses are a like distance away; he finds that the expense of time and trouble to conduct a litigation at so great a distance will eat up all his demand, and he has the alternative to abandon his claim, or litigate it at this ruinous disadvantage. He must transport himself, his attorneys and his witnesses, over the lines of the corporation against whom he holds the claim, and while it is to him financial loss, it is financial gain to his adversary.

It was because of this hardship on the people of Iowa that the State thought to avail itself of the rights which this court in *Doyle vs. Continental Insurance Company* say it has.

There was no purpose or intention in the enactment of this law to interfere with the rights of congress to regulate commerce between the States.

VI.

The last point in the contention of the plaintiff in error is that the law in question is in violation of the 14th amendment to the Constitution of the United States.

On this point my associate counsel has a full brief. The question is, however, now settled by this court adversely to the claim of plaintiff in error by the decision in *Fire Association vs. New York*, 7 Supt. Ct. Rep., 108, and I do not deem it necessary to add anything thereto.

A. J. BAKER,

Attorney-General of Iowa, for defendant in error.

121-186

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1886.

No 1335.

HENRY S. BARRON, PLAINTIFF IN ERROR,

vs.

GEORGE W. BURNSIDE, SHERIFF, &c., DEFENDANT IN ERROR.

IN ERROR TO THE SUPREME COURT OF IOWA.

Reply for Plaintiff in Error.

W. C. GOUDY,
J. J. HERRICK,
For Plaintiffs in Error.

JUDD & DETWEILER, PRINTERS.

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I.

THE LEASES AND DEEDS OF THE CHICAGO AND NORTHWESTERN RAILWAY COMPANY.

The act of 1886, for a violation of which Barron, the plaintiff in error, was arrested, was enacted for the purpose of preventing the removal of cases to the courts of the United States by the Chicago and Northwestern Railway Company and other foreign railroad corporations. For more than

twenty-five years these corporations had been recognized and treated as foreign and as operating railroads of Iowa by virtue of leases or conveyances. The jurisdiction of the Federal courts of controversies with citizens of the State had been uniformily exercised in pursuance of decisions of the courts of that State. No claim had been made that such corporations had become corporations of Iowa. The right of the foreign corporations to operate the roads under contracts, leases, and deeds was never denied. Among these corporations were the Chicago and Northwestern, the Chicago, Burlington and Quincy, the Chicago, Milwaukee and St. Paul, and the Illinois Central, controlling thousands of miles in Iowa. The validity of the contracts had not only been undisputed but expressly recognized and held to be authorized by the statutes of the State.

In the *Treadwell* case, 21 Iowa, 256, 260, the leases of the Iowa roads to the Chicago and Northwestern were held to be valid and authorized by section 4 of the act of March 28, 1864, and that the lessee was entitled to a removal of the case to the United States court. The court, by Judge Dillon, says:

"As we view it, the primary object of this section was to authorize the directory of an Iowa railway company to lease their road, or to make a joint running arrangement with *any connecting road.* * * * The act (ch. 86, act 1864, sec. 4) *allows, so far as the State is concerned, a foreign railroad company, having a line of railroad connecting with an Iowa road, to lease the latter and operate it.*"

Again, in the *Stewart* case, 27 Iowa, 285, 286, the lease involved in this record of the Cedar Rapids and Missouri River Railroad Company to the Chicago and Northwestern Rail-

way Company was before the Court. The fact that there was such a lease and that it was valid was found by the court below:

"4. In 1864 the Cedar Rapids and Missouri River Railroad Company, the then owner of this road, leased the same to the defendant (Chicago and Northwestern Railway Co.), the lease running until the expiration of the charter of the company so owning the road, or fifty years from June, 1859. The defendant had the exclusive right to run, operate, and control the road until the expiration of the lease, unless sooner forfeited by the lessee." (383.)

The question was as to the liability for killing stock and to fence the road, and the opinion turned on the existence of the lease and liability prior to the act of April 3, 1868. (Argument for plaintiff, 15.) It is said: "Here the defendant had the exclusive right to run, operate, and control the road until the year 1909. * * * It was the company owning and running the road within the meaning of the law. It was, in a word, running and operating it as its own, having the right to fence for its own protection, and, hence, under a like liability as though the absolute and entire owner." (285.) Again, the Court say: "We were aware of these extended leases; we were aware that those holding the same *had an estate* of a more permanent character than if limited to a few months or a year; that it was of such a dignity as that when sold under execution it would be redeemable; that the spirit of the law extending to them exclusively controlling and while operating and running these roads, and never designed to exempt such from the provisions of the statute." (386.)

In the *Lewis* case, 63 Iowa, 104, 109, 110, the court held that the lease under the said act and a deed under the sections of the code of 1873 were valid, a plaintiff in ejectment recovering by virtue of a title derived through them. Similar decisions have been made as to other corporations created in other States which operated roads in Iowa.

For the purpose of compelling these corporations to submit to the jurisdiction of the State courts the act of 1886 was passed. For the violation of its provisions Barron was arrested. The supreme court of Iowa, in entering the judgment in this case, affirmed these propositions. Barron was remanded to custody because he was running the train of a foreign corporation, which had not applied for or received a permit to do business in the State. The decision rested on the theory that the Nortwestern was a corporation of Illinois and not of Iowa, and that it was rightly doing business by operating a railroad in Iowa, except for want of the permit.

If by the leases and deeds the Northwestern had become a corporation of Iowa then the act of 1886 would not apply. Barron was not guilty, and he should have been discharged instead of remanded.

But the supreme court of Iowa, by its judgment and opinion, *held that the Northwestern was covered by the provisions of the act*, and sustained the law on the ground that it was not repugnant to the Constitution of the United States. This removes from the consideration of this Court the question now made as to the title of the Northwestern to its property in Iowa and its existence as a corporation of that State. The only questions to be decided here are those as to whether or not the act of 1886 is in conflict with the Constitution of the United States. There is no jurisdiction for any other purpose.

Yet counsel for the defendant in error now claim—

First. That the leases by the Iowa corporations made in 1862, 1865, and 1869, and the deeds in 1884 are void and not authorized by the Legislature of that State; and

Second. That the effect of the leases and deeds under the laws of Iowa was to create a *new corporation* existing in both Illinois and Iowa.

Although we contend that these propositions were decided by necessary implication in the court below in the negative, and that the judgment turned on the constitutional points, as shown by the opinion, the attention of the Court is called to the statutes, leases, and deeds, because these questions are of great importance to the several railway companies of other States using property in Iowa as a part of interstate lines.

To the point that the act of 1886 impairs the obligation of a contract, the principal answer seems to be that there is no contract, because neither leases or deeds were authorized by the laws of Iowa. To the proposition that the act interferes with the power of Congress to regulate commerce among the several States, the answer seems to be that the railway company has acquired no property or rights in Iowa, or that it has become an Iowa corporation and subject to control of the Legislature of that State. To the suggestion that the effect of the act is to deprive the railway company of its property without due process of law, the same answer seems to be made. To the claim that the act deprives the citizens of another State of the right to have controversies decided in the courts of the United States, the answer seems to be that the railway company has become an Iowa corporation; or, if not, it can be excluded from the State.

The different conveyances under which the Chicago and Northwestern Railway Company acquired title are—

(1.) Leases by the Chicago, Iowa and Nebraska Railroad

Company and the Cedar Rapids and Missouri River Railroad Company, dated, respectively, July 3 and July 8, 1862. These leases were presumably made under section 3 of the law of 1855, and any question as to the original authority to make them under that section it is claimed was removed by the confirmatory section 5 of the act of 1864.

(2.) New leases were made by the Cedar Rapids and Missouri River Railroad Company and the Chicago, Iowa and Nebraska Railroad Company subsequent to the law of 1864, viz., in 1865 and 1869, and leases by the other companies all subsequent to the law of 1864 and prior to 1884. These leases so far as made prior to the code of 1873 were made under the law of 1864, and those subsequent to the code under its provisions.

(3.) Deeds from the several corporations made subsequent to the code of 1873, and of different dates in July, 1884, purporting to sell and convey to the C. & N. W. Railway Company all their property and franchises for considerations recited in the several deeds.

No question is made as to the authority given by the statutes of Illinois. The sole question is as to the statutes of Iowa. The question made is thus stated by the Attorney General:

> "In the view we take of the Iowa law there is no statute of the State authorizing a domestic railroad corporation to sell its constructed road and franchises to a foreign corporation" (p. 20).

As the deeds, if valid, were a merger of the previous leases and represent the present title of the company, we will first consider the question as to them.

Section 1300 of the code of 1873, in force at the date of these deeds, is as follows:

"Any *such* corporation may sell or lease its railway property and franchises to, or may make joint running arrangements with *any* corporation *owning or operating any connecting railway*, and the corporation operating the railway of another shall, in all respects, be liable in the same manner and extent as though such railway belonged to it, subject to the laws of this State."

The words "any *such* corporation," in the beginning of this section, occur in several sections which follow section 1273. The description to which they refer is found in section 1273, which begins: "Any corporation organized under the laws of this State for the purpose of constructing and operating a railway may," &c. Substituting these words section 1300 reads:

"Any corporation organized under the laws of this State for the purpose of constructing and operating a railway may sell or lease its railway property and franchises to or make joint running arrangements with *any* corporation *owning or operating any connecting railway*, and the corporation operating the railway of another shall in all respects be liable in the same manner and extent as though such railway belonged to it, *subject to the laws of the State.*

It is argued by counsel that this section only authorized a lease or sale to domestic corporations. Such is not the language. It is not "any *domestic* corporation," but "*any* corporation," etc. It is not "any corporation *of this State*" or "any corporation *organized under the laws of this State*," but "*any* corporation owning or operating *any connecting railway.*" The language includes both foreign and domestic corporations. Why import a qualification into it which the Legislature has not expressed? If the Legislature intended

to limit the authority confered to domestic corporations it would have been easy to say so.

It is not claimed that any language found either in this section or in any other section of the code limits the plain meaning of the words "*any* corporation *owning or operating any connecting road*," either expressly or by implication. On the contrary, the use in the same section of the specific words "any corporation organized under the laws of this State," in describing the corporation authorized to lease, shows that the general words "*any* corporation" were intelligently and intentionally used in describing the corporations to which they were authorized to lease. And that it was intended to authorize leases and sales to foreign as well as domestic corporations is further shown by the concluding words "subject to the laws of this State." If the section had reference only to leases, &c., between domestic corporations these words would be meaningless.

In the case of *Dodge* vs. *City of Council Bluffs*, 57 Ia., 560, the supreme court of Iowa gave a construction to similar language in another section of the code. In that case section 474 of the code provided that cities and towns should have power to condemn private property for the construction of water-works, and that "when they shall authorize the construction and operation thereof by individuals or *corporations* they may confer by ordinance upon such person or corporation the power to take and appropriate private property for said purpose." Under this section the city of Council Bluffs entered into a contract with a corporation of New York for the purpose of supplying it with water, and granted to that corporation by ordinance the right to condemn and appropriate private property for the construction of the water-works.

It was contended that the "corporations" referred to were Iowa corporations, and the section did not authorize the cities to grant the power of eminent domain to foreign coreign corporations. The court, Adams, C. J., at page 564, say:

"This right, it is said, cannot properly be granted to a foreign corporation. * * * We are not prepared to say that the American Construction Company could, by reason of considerations of mere interstate comity, be allowed under any ordinance which the defendant city could pass, to condemn and appropriate private property for the construction and operation of its water-works, but it is certainly competent for the Legislature to grant such power, and in our opinion the Legislature has granted it. * * * The legislative intent to confer the power is abundantly manifest. This, we think, would not be questioned where individuals or a domestic corporation is proprietor. But is said that we are not justified in supposing that the Legislature contemplated a case where a foreign corporation is proprietor. *In our opinion the statute will not justify the narrow construction which the plaintiffs would put upon it. This power given to cities and towns to contract with corporations for the construction and operation of water-works is general. If the intention had been to restrict them to domestic corporations it would have been easy to expressly so provide.*"

In *Ogdensburg, &c.*, vs. *Vermont R. R. & C. Co.*, 16 Abbott's Prac., N. S., 262, a statute of New York provided that it should be "lawful for any railroad corporation to contract with any other railroad corporation for the use of their respective roads," etc. Under this statute a New York corporation entered into a contract with a Vermont corporation for the use of its road. The court say:

"It is urged that these defendants are foreign corporations, and that said act does not include foreign corporations. It does not in terms say 'foreign corporations,' but the language is broad enough to include all corporations. It says.

'any other corporation,' and as the greater always includes the less, the act should be so construed as to apply to all corporations that come together and are capable of forming a continuous line of railroad connection, whether all are located in this State or one in this State and one in another."

The sole argument of counsel is that section 1300 is the same as section 4 of the act of 1864, and counsel argue that this latter section was not intended to apply to foreign corporations, and therefore section 1300 did not.

Section 4 of the act of 1864 is as follows:

"The board of directors of any railroad company shall have power to authorize contracts of lease or joint running arrangements with *any connecting road* for the operation of such connection, upon such reasonable and just terms as may be agreed upon by the parties, and the parties thus leasing or operating the railroad of another company shall in all respects be liable to the public for their acts or negligence in the same manner as though the road belonged to them."

Here we have like general language, "*any* connecting road," and in Tredway *vs.* C. & N. W. Railway Co., 21 Iowa, 351 (decided in 1866), the supreme court of Iowa, in passing on the lease made by the Cedar Rapids and Missouri River Railroad Company to the Chicago and Northwestern Company under this very section, say:

"As we view it, the primary object of this section was to authorize the directory of an Iowa railway company to lease their road, or to make a joint running arrangement with *any connecting road.* * * * The act (ch. 86, act 1864, sec. 4) *allows, so far as the State is concerned, a foreign railroad company having a line of railroad connecting with an Iowa road to lease the latter and operate it.*"

See also—

Stewart *vs.* C. & N. W. R. R. Co., 27 Ia., 282.
C. B. & Q. R. R. Co. *vs.* Lewis, 53 Ia., 101.

If, as counsel claim, section 1300 is the same as section 4 of the act of 1864, it was presumably re-enacted in view of the express construction given to it by the supreme court in the Tredway and subsequent cases, and, as this record shows, so frequently acted on.

If the Legislature, in re-enacting this section in the code, had intended to exclude foreign corporations from its operation, would they not, in view of these decisions and the well-known facts, have expressed that intention?

On the contrary, the very changes they did make, so far from excluding, strengthen and confirm the previous construction.

In revising the section they substituted for the words "any railroad company," description of the companies authorized to lease, the more specific words "any corporation organized under the laws of this State," and for the general words "*any* connecting road" the words "any corporation owning or operating *any* connecting railway," and added the significant words "subject to the laws of this State."

It is said by counsel that at the time the law of 1864 was passed the Legislature had made specific provisions, by the law of 1855, authorizing foreign companies (1) to consolidate (section 1); (2) to make contracts for the transportation of passengers, &c. (section 3); and therefore the Legislature, in granting authority to Iowa corporations to *lease* to "any connecting road," did not intend to authorize them to lease to foreign companies.

The argument is the other way. The very liberality of the provisions of the previous law shows the policy of the State to encourage by liberal provisions connections with roads of adjoining States, and if it had been their intention

(contrary to the language of the act) to depart from this policy in this particular instance they would have so expressed it.

Counsel say section 3 of the act of 1855 authorized "joint running arrangements" with foreign corporations, and that, as section 4 of the act of 1864 authorizes "joint running arrangements" as well as leases; it could not have been the intention to apply it to foreign corporations.

We do not concede that the conclusion follows, but the premise is false. Section 3 of the act of 1855 does not authorize "joint running arrangements." It uses no such language, and relates to a wholly different class of contracts. (Argument for plaintiff in error, p. 14.)

Reference is also made by counsel to certain assumed facts as to the history of railroad building in Iowa prior to the date of the act of 1864 as favoring his contention.

We do not understand the facts to be as counsel claim. But, aside from this, will this Court accept these assertions of counsel and their assumed bearing on the intention of the act as against the direct ruling of the supreme court of Iowa in the Tredway case, practically contemporaneous with the passage of the act?

We submit, therefore, that not only were the sales authorized and valid under section 1300, but that the leases were also fully authorized by the act of 1864.

It is contended by Mr. Sweeney that the several conveyances to the Northwestern Company were made under section 1275 of the code and not section 1300, and that the effect of section 1275 is to create by consolidation a new corporation existing in both States, which is in Iowa an Iowa corporation.

Section 1275 is as follows:

"Any such corporation may join, intersect, or unite its railway with the railway of any other corporation at such point on the boundary line of this State as may be agreed upon by such corporations; and with the assent of three-fourths in interest of all the stockholders may, *by purchase or sale*, or otherwise, merge and consolidate the stock, property, franchises, and liabilities of such corporations, making the same one joint stock corporation, upon such terms as may be agreed upon, not in conflict with the laws of this State."

We deny that the conveyances to the Northwestern Company were made under this section.

(1.) If the intention of section 1275 was to merge both of the consolidating companies, and create a new corporation, it is clear that the conveyances to the Northwestern Company did not have this effect, and therefore were not made under it. The conveyances only purport to convey to *that* company the property and franchises of the granting companies for express considerations. So far from showing an intention to merge the Northwestern Company in a new company they show an intention to preserve its existence by making it the grantee in the deeds, and providing for issuing shares of its stock in part payment.

(2.) There could not be a consolidation resulting in the formation of a new company in Iowa, for the reason that *the laws of Illinois did not authorize the Northwestern Company to form such new corporation.* They authorized it to lease and to purchase. This it did, and this was all it intended to do.

(3.) The supreme court of Iowa necessarily held that the Chicago and Northwestern Railway Company did not be-

come a corporation of Iowa; otherwise it would have discharged the petitioner.

We also deny that if it is assumed that the conveyances can only be sustained (as the contention of counsel concedes they can be) under section 1275, the effect of consolidating "by purchase or sale" "the stock, property, and franchises" of two companies as authorized by it would be to create a new corporation.

The argument is that because the section speaks of a consolidation the necessary effect of the act was to create a new corporation out of the consolidating companies.

But counsel is in error in the assumption that a consolidation of two companies necessarily creates a new corporation.

Morawetz says:

"It should be borne in mind that the term 'consolidation' has been applied to various transactions resulting in the union of the stockholders of different corporations. * * * Thus two corporations may be united—

"(1.) By dissolving both companies and destroying their legal identity and creating a new corporation out of the members of the old.

"(2.) By dissolving one of the companies and destroying its legal identity while preserving the other company and issuing shares in that company to the shareholders in the dissolved company. In this case the legal identity of the one company continues unchanged.

"(3.) By preserving the legal identity of both companies. This may be done by issuing shares in the one company to the shareholders in the other company in exchange for their shares, thus making the one company the holder of the shares in the other company.

Morawetz on Corporations, 2d Ed., sec. 492.

In *Central R. R. Co.* v. *Georgia*, 92 U. S., 665, the Court, in holding that the act before it maintaining "consolidation" did not create a new corporation, say:

"It may be that the consolidation of corporations, or amalgamation, as it is called in England, if full and complete, may work a dissolution of them both, and the effect may be the creation of a new corporation. *Whether such be the effect or not must depend upon the statute under which the consolidation takes place and the intention therein manifested.*"

And in this case the Court further say:

"If in the statute there be no words of grant of corporate powers it is difficult to see how a new corporation is created. If it is it must be by implication, and it is an unbending rule that a grantor corporate existence is never implied."

What was the intention of the Legislature as manifested in the section in question?

That it was not the intention that a new corporation should be created is made clear by the language of the section. The provision is that the consolidation may be "by *purchase* or *sale*, or otherwise." A purchase or sale necessarily implies a grantor and grantee. To constitute a *sale* one of the uniting corporations must sell and the other must buy. Obviously this is a very different transaction from the merger of both corporations by the formation of one new corporation. The very language "by purchase or sale or otherwise" necessarily implies that the consolidation by "purchase or sale" should be different from the consolidation which might be understood if no words other than the general language had been used.

As to the consolidation of the Chicago and Southwestern railway of Iowa with the Chicago and Southwestern railway

of Missouri, under the statutes of Iowa and Missouri, referred to in *Muller* v. *Dows*, 94 U. S., 444, cited at length by counsel in the court below, we say: (1) The sole question in the case was whether by the consolidation the Iowa corporation became a Missouri corporation for purposes of citizenship, the court holding that it did not. (2) It does not appear that the consolidation in that case was by sale, but, on the contrary, it was *assumed* by both counsel and the court that a new corporation was created by the consolidation. (3) From the language quoted it would seem that the consolidation was made under the original Iowa statute and before the words "by purchase or sale or otherwise" were inserted.

In the case of Graham *vs.* Boston, Hartford and Erie R. R. Co., 118 U. S., 161, there was an express grant of corporate powers in the act authorizing the consolidation. The act provided for the making and filing of a certificate by the consolidating companies, and that on the filing of the certificates "the Boston, Hartford and Erie Railroad Company shall become possessed of the *rights of charter* and property, etc., and have all the rights the corporations making the sale had," etc., and the title of the act showed an intention to create a new corporation in New York. In section 1275 there is no grant of corporate powers. It authorizes the companies to consolidate "their stock, property, and franchises by purchase or sale"—that is, by "sale" by the granting company to the purchasing company. The grant by the one to the other could not and the act does not create a new company.

II.

Interstate Commerce.

It is earnestly insisted by counsel for the defendant that the act of 1886 does not interfere with the power of Congress to regulate commerce among the several States. The assertion is made that there is no attempt to *regulate*—that is, to make rules.

The object of this provision was much larger than the making of rules. The purpose was to withdraw from the States and confer upon Congress the power to control commerce. It is now settled that, with the exception of legislation as to bridges, harbors, and similar things, Congress has exclusive power, and non-action is a declaration that commerce shall be free. Railroads, as carriers of articles of commerce, are within the provision of the Constitution. Congress, however, has acted.—*first*, by the passage of the act of 1866 (now § 5258 R. S.); and, *second*, by the recent act, which is to go in force April 5. Both acts relate to railroads running from one State into another. It is provided in the first section of the last act that "the term railroad as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease."

The subject embraced by the Iowa act is exclusively within the power of Congress, and the State cannot legislate in regard to it.

Whatever obstructs the movement of commerce among the several States is prohibited by the Constitution. While

it is conceded that many things may be done by a State which affect commerce—such as the collection of taxes levied on the property, or police regulations to insure public safety, yet it cannot be contended successfully that a State can prohibit the introduction of lawful articles of trade or the entrance of persons engaged in their sale, or of the carrier taking them from one State into another. The exercise of such a power is more than *regulation—it is prohibition.*

A law which forbids the peddler from driving his wagon loaded with goods for sale from one State into another is void. Can a different rule be applied to a corporation than to a natural person? Does the fact that the vehicle is a railroad car running on iron rails used by a corporation justify a State in prohibiting an entrance allowed to a peddler with his wagon?

This Court decided, in *Paul* vs. *Virginia*, 8 Wall., 168, that a corporation was embraced in the commerce clause as well as a natural person.

Section 5258, Revised Statutes, declares that—

> "*Every railroad company* in the United States whose road is operated by steam, its successors and assigns, is hereby *authorized* to carry upon and over its road, boats, bridges, and ferries all passengers, troops, Government supplies, mails, freight, and property on their way from any State to another State, and to receive compensation therefor, *and to connect with roads of other States, so as to form continuous lines for the transportation of the same to the places of destination.*"

This Court has declared, in *Railroad Company* vs. *Richmond*, 21 Wall., 589, that the object of Congress by that act was to prevent State legislation against the transportation on railroads from one State to another.

The late act of Congress applies to railroad companies en-

gaged in transportation of passengers or property by a continuous carriage from one State into another, &c., and that it shall be unlawful by any means or device to break a continuous carriage from the place of shipment to the place of destination.

It is submitted, in view of these facts, that it is out of the power of any State to prohibit the connection of railroads at State lines and the carriage of passengers and freight into or across the State. The right of a State to prevent a foreign corporation from entering that State does not exist as to one engaged in interstate commerce.

In Railroad Company *vs.* Husen, 95 U. S., 470, the Court say:

"The Missouri statute is a plain interference with such transportation, an attempted exercise over it of the highest possible power—that of destruction. It meets at the borders of the State a large and common subject of commerce and prohibits its crossing the State line during two-thirds of each year, with a proviso, however, that such cattle may come across the line loaded upon a railroad car or steamboat and pass through the State without being unloaded. But even the right of steamboat owners and railroad companies to transport such property through the State is loaded by the law with onerous liabilities because of their agency in the transportation. The object and effect of the statute are, therefore, to obstruct interstate commerce and to discriminate between the property of citizens of one State and that of citizens of other States. This Court has heretofore said that interstate transportation of passengers is beyond the reach of a State Legislature. And if, as we have held, State taxation of persons passing from one State to another, or a State tax upon interstate transportation of passengers, is prohibited by the Constitution because a burden upon it, *a fortiori*, if possible, is a State tax upon the carriage of merchandise from State to State. Transportation is essential to commerce, or, rather, it is commerce itself; and every obstacle to it or burden laid upon it by legislative authority is regulation. *Case of the State Freight Tax*; 15 Wall.,

232; Ward *vs.* Marland, 12 *Id.*, 418; *Welton* vs. *The State of Missouri*, 91 U. S., 275; *Henderson et al.* vs. *Mayor of the City of New York et al.*, 92 *Id.*, 259; *Chy Lung* vs. *Freeman et al.*, *Id.*, 275. The two latter of these cases refer to obstructions against the admission of persons into a State, but the principles asserted are equally applicable to all subjects of commerce."

When the subject-matter is commerce of a general and national character a State Legislature cannot act at all. It is a forbidden domain. All such legislation is repugnant to section 8, article 1, of the Constitution. These principles have been very recently considered and established in *Wabash Railway* vs. *Illinois*, 118 U. S., 557; *Robbins* vs. *Taxing Dist. Shelby Co.*, No. 816, Oct. T., 1886.

In *Paul* vs. *Virginia*, 8 Wall., 168, it was held, at least by implication, that a foreign corporation engaged in commerce could not be excluded from another State. It was only because an insurance company was not engaged in commerce that the exclusion was sustained in that instance. Such was the view of that case by this Court in Pen. Tel. Co. *vs.* W. U. Tel. Co., 96 U. S., 1.

But the Northwestern Railway Company occupies a stronger position. It has been actually engaged in the transportation business from one State to another and into Iowa for more than twenty-five years, with the consent of that State; connections were made as early as 1859. While it used the roads in Iowa in accordance with valid leases and recently acquired the absolute title by deeds, it is immaterial by what right it has conducted this business. It may even be as claimed by counsel—merely by comity. In the exercise of its privileges the company has built roads, bought property, and expended millions of dollars to enable it to

carry on such business. Under these circumstances, being engaged in the business by authority of an act of Congress, the State of Iowa could not prohibit the corporation from *continuing* to do business in the State.

There is a difference between the exclusion of a corporation which has never done business or acquired property in the State and one which has. In the latter case the provisions of the Federal Constitution stand in the way.

There is a difference between a corporation not engaged in commerce and one which is, because one is protected by the Constitution while the other is not.

The cases of *Paul* vs. *Virginia*, *Doyle* vs. *Ins. Co.*, *Fire Association* vs. *New York* are related to insurance companies which were not engaged in the business of commerce.

In the latter case this Court say:

"It is not to be implied from anything we have said that the power of a State to exclude a foreign corporation from doing business within its limits is to be regarded as extending to an interference with the transaction of commerce between that State and other States by a corporation created by one of such States."

Unless the Legislature of Iowa could exclude from the State the Chicago and Northwestern Railway Company, the act of 1886 is invalid, and Barron was guilty of no offense. The right to fix conditions rests upon the greater right to exclude, as decided in the *Doyle* case.

III.

THE STATUTE IS CONTRARY TO SECTION 2, ARTICLE 3, OF THE CONSTITUTION, AND THE LAWS OF CONGRESS ESTABLISHING AND DEFINING THE JURISDICTION OF THE FEDERAL COURTS.

The case of *Insurance Company* vs. *Morse*, 20 Wall., 445, directly sustains this proposition. In that case a statute of Wisconsin provided—

"That any fire insurance company, association, or partnership incorporated by or organized under the laws of any other State of the United States desiring to transact any such business as aforesaid by any agent or agents in this State shall first appoint an attorney in this State on whom process of law can be served, with an agreement that such company will not remove the suit for trial into the United States circuit court or Federal courts, and file in the office of the secretary of state a written instrument, duly signed and sealed, certifying such appointment, which shall continue until another attorney is substituted."

The Court state its conclusions on this provision as follows:

"The Constitution of the United States secures to citizens of any other State than that in which the suit is brought an absolute right to remove their cases into the Federal court upon compliance with the terms of the act of 1879. The statute of Wisconsin is an obstruction to this right, is repugnant to the Constitution of the United States and the laws in pursuance thereof, and is illegal and void."

The later case of *Doyle* vs. *Insurance Company*, 94 U. S., 535, is not in conflict with *Morse* vs. *Insurance Company*, but, on the contrary, reaffirms it.

All that the Doyle case decided was that the court would not *enjoin* the State, through its officers, *from revoking* a per-

mission it had given the insurance company to do business in Wisconsin.

Those cases do not arise on the statute or involve a question as to its validity. In this case Barron has been arrested for violating the statute, and it is sought to fine and imprison him as punishment. If it is void, as was held in the *Morse* case and affirmed in the *Doyle* case, he is entitled to a discharge. If a permit had been taken out by the railroad company and an application made to restrain the State officers from revoking it, the *Doyle* case would be authority against the right to the injunction.

IV.

The Reserved Powers.

It is contended that the State of Iowa had the power reserved which would compel the Northwestern to obey the act of 1886, and prevent it from objecting to its validity.

The act was not passed in pursuance of any such reserved power.

It does not and could not apply to any of the Iowa corporations, because none of them were or are foreign corporations. There was no right existing by which the Iowa corporation could remove cases, where a citizen of Iowa was a party, to the United States court.

In no sense can the prohibition as to removal of cases or the making of the stipulation be considered as "rules and regulations" or as "in regard to the management of railroads and the charges for the transportation and passengers thereon" within the meaning of the land-grant act of 1856 or the local-aid acts of 1870 and 1876. *A fortiori* the pro-

vision as to the Northwestern Railway Company, a corporation of Illinois, could not relate to rules, regulations, or management, or charges of the railroads constructed by Iowa corporations.

Nor could the act of 1886 be considered as an alteration or repeal of the charter of the Iowa corporation under the provisions of section 1090 of the code of 1873 or of the constitution of 1857.

The counsel for the defendant, in citing the Iowa constitution and statutes as to the different reservations and applying them to the Iowa railroads now owned by the Northwestern railway, produce some confusion by omitting the dates.

The Chicago, Iowa and Nebraska Railroad Company was organized January 26, 1856. (*Rec.*, 23.) It built a road from Clinton, on the Mississippi river, to Cedar Rapids, and acquired the right to the bridge and ferry across the river. (*Rec.*, 17.) Barron was arrested for running a train over this road from Clinton to Boone. (*Rec.*, 21, 22.)

Section 12, article 8, was in the Iowa constitution of 1857, which went in force in August of that year. No such provision was in the former constitution, which was in force when the C. I. & N. R. R. Co. was incorporated.

Section 1090 of the code of 1873 had no existence in the legislation of Iowa before that time, *and it only applied to corporations thereafter organized.*

The rights, privileges, and franchises of the company owning the road from Clinton to Cedar Rapids were acquired before these provisions were adopted, and that company was not subject to them.

There was no land grant to that company, nor did it re-

ceive any local aid, and, therefore, the provisions on those subjects did not apply to this company.

The Northwestern Railway Company acquired the rights of the Chicago, Iowa and Nebraska Railroad Company by the leases and deed, and did not by them become subject to legislation as to alteration of charters granted at a subsequent time.

The Northwestern Company was required by the act of 1886 to take a permit and stipulate, in order to get it, that it would not remove cases, and in default it was prohibited from operating any of its roads in Iowa. If the act is to rest on the reserved powers mentioned in the Constitution and statutes cited by counsel it is invalid as to the Northwestern, because it would be obliged to stipulate as to the lines to which such provisions did not apply as well as to those which they did.

The Cedar Rapids and Missouri River Railroad Company was organized June 14, 1859, and this road with that from Clinton to Cedar Rapids makes the trunk or main line of the Northwestern in Iowa. This had a land grant but no local aid, and it was created before 1873, when section 1090 was adopted.

The Iowa Midland, one of the main branches, was organized March 2, 1870, and had no land grant and received no local aid.

The Des Moines and Minneapolis, running north from Des Moines, was organized August 1, 1870, and had no land grant or local aid. None of the companies had a land grant except the Cedar Rapids and Missouri River, and none local aid except the Wall Lake and Sauk City branches and a part of the Maple River—all short lines.

It is very clear that the act of 1886 was not an exercise of any reserved power, and it was not intended so to be. It covers by its language "all corporations for pecuniary benefit, other than for carrying on mercantile or manufacturing business, organized under the laws of any other State, or of any Territory of the United States, or of any foreign country," and exempts from its operation those engaged in lending money, &c.

W. C. Goudy,
J. J. Herrick,
For Plaintiffs in Error.

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121-186

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1886.

HENRY S. BARRON,
Plaintiff in Error.

vs.

GEO. W. BURNSIDE,
Sheriff of Linn County, Iowa.

In Error to the Supreme Court of the State of Iowa.

J. H. SWENEY, *with the Attorney-General of Iowa, for Defendant in Error, and the State of Iowa.*

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BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

THE questions involved in this contest are not new to this court. They involve a determination of whether or not the State of Iowa may, as a condition of doing or continue to do business within its borders, require corporations of other States to apply for and obtain (without fee or tax) a permit from the State of Iowa, so to do; such permit granting all rights and privileges possessed by corporations of the State of Iowa. The authority of the State of Iowa to do this is denied by plaintiff in error.

Whether or not statutes like this (chapter 76 of the acts of the 21st General Assembly of Iowa) is in violation of:

1st. Section 10, article 1 of the Constitution of the United States, prohibiting laws impairing the obligation of contracts.

2d. Whether they are repugnant to the fourteenth amendment to the Constitution of the United States; or

3d. Void, as an attempt to interfere with the jurisdiction of the federal courts, established by the Constitution and acts of Congress, has been specifically determined; and such statutes were sustained in the cases of

Paul vs. Virginia, 8 Wall., 168.

Doyle vs. Continental Ins. Co., 94 U. S., 540.

Fire Association vs. State of New York, 7th Supreme Court Reporter, page 188; and

4th. That such statute is not in conflict with section 8, of article 1 of the Constitution of the United States, granting to Congress power to regulate commerce with foreign nations and between the States, was determined in the case of

Munn vs. Illinois, 94 U. S., 113.

Fuller vs. The C. & M. Railroad, 17 Wall., 566.

B. & O. Railroad vs. Maryland, 21 Wall., 470.

That this law of Iowa is void upon each of the grounds hereinbefore specified is claimed by plaintiff in error, and consequently it becomes necessary for us to present authorities upon each proposition and to argue them *de novo*.

The facts necessary to a determination of the questions involved are found in the stipulation filed in the case.

It is admitted that if this law of Iowa is valid, that plaintiff in error is subject to the penalties therein prescribed, and that the relief asked should not be granted.

It is admitted too, that the plaintiff in error was, when arrested, in the employ of the Chicago & Northwestern Railroad Company in the transaction of its business in the State of Iowa. That the C. & N. W. Railroad claims to be a corporation of the State of Illinois, and was engaged with this employe in the transaction of both State and inter-State transportation.

That corporations created under the laws of Iowa constructed lines of railroad in Iowa, which are now operated by the Chicago & Northwestern Railroad Company.

The primary sovereignty is in the States, and this rule is only changed by specific grants of power to Congress.

"Full power and control over its territory, its citizens and its business belongs to the State."

Doyle vs. Continental Ins. Co., 94 U. S., 542.

"The powers possessed by parliament, without subtraction, except as specifically limited in the constitution of the National and State governments, is vested in the State legislatures."

Woolsey's Inter-national Law, Par. 36 and 37.

This eminent author there says also, that "from the nature and destination of a State, it must in a sense be as truly separate from the rest of the world as if it were the only State in existence; it must have the exclusive right to impose laws within its own territory; the sole regulation in general, of its subjects. * * We find it necessary for the conception of States to predicate of them sovereignty, independence and equality each with the rest. * * By sovereignty is meant the uncontrolled, exclusive exercise of the power of the State; that is the power of governing its own subjects."

"This power is supreme within the certain territory and supreme over its own subjects whenever no other sovereignty has jurisdiction."

Woolseys Inter-national law, par. 36 and 37.

"Sovereignty over seas and lands vested in the British Crown, was wholly determined by the Declaration of Independence, acknowledged and acceded to by the treaty of peace; sanctioned by act of Parliament. This right of domainion and controling power over the sea and its coasts, shores and tide waters is vested in the several States in their sovereign capacity respectively, and was not transferred to the United States by the adoption of the constitution, intended to form a more perfect union. Special jurisdiction has been from time to time vested in the general government for special purposes, but the general jurisdiction resides in the several States, subject to such regulations as Congress may make in the exercise of their admitted powers to regulate foreign commerce and commerce between the States."

Sedgwicks construction of statutes, 2d ed., 440, citing

Commonwealth vs. Alger, 7 Cushing, 53–82.

This was the law and these were the rights of States when the constitution of Iowa was adopted and when the acts creating the Iowa corporations involved in this action, were enacted.

Constitutions and laws are to be construed in the light of the understanding of them when adopted.

There is no delegation of power over corporations, foreign nor domestic, as corporations within the States; to the Federal goverment as a result, their control is retained by the States and the people thereof.

Section 2, of article 8 of the constitution of Iowa, provides that corporations shall not be created by special laws, except for political or municipal purposes, but the General Assembly shall provide by general laws, for the organization of all corporations excepting those with banking privileges; and it then declares that stockholders shall be liable to such restrictions as shall be provided by law.

It will be observed that their is no limitation upon the power of the legislature to repeal such general laws. The constitution is a limitation, not a grant of power.

The provision in article 8 of the constitution providing for special laws in case of political, or municipal corporations gives the right to confer special privilegs of which they could not be deprived by act of the legislature; *such* grants being held in this country to constitute contracts, when made within the authority of the legislature.

The power of Parliament to incorporate and to dissolve corporations exists to the full extent in the State legislatures, where no contract to the contrary is made.

Thus, we maintain that corporations created under, and dependent upon the general laws of Iowa for their existence, are subject to dissolution, or to any modifications or burdens within the limits of dissolution, by the legislature, as fully as are corporations under act of Parliament.

Learning from the Dartmouth College Case, as did other States, that special charters might bind as contracts, and desirous of avoiding this, Iowa refused to grant them, excepting to political or municipal corporations; but so careful were the framers of the constitution of the State to guard against harm from that source that it was provided in section 12 of article 8, that the right is reserved to repeal all laws organizing and creating corporations by two-thirds vote of each House of the General Assembly.

"Charters are construed most favorably to the State."

Birmingham Bridge Company, 3 Wall., 51

Peik vs. C. & N. W. R. R. Co., 94 U. S., 164.

The State is not bound by inference, and nothing passes by implication.

Peik vs. C. & N. W. R. R. Co., supra.

Dubuque & Pacific Railroad Co. vs. Litchfield, 23 How., 66.

Chicago Life Ins. Co. vs. Needles, Auditor, 113 U. S., 574.

The understanding of the question, both by the people of Iowa and by the Federal Government, as to what constitutes a legislative contract, was made manifest at the founding of the State, as follows:

In section 7 of the original act for the admission of Iowa and Florida to the Union it was provided that the States should be "admitted into the Union upon the express condition that they shall never interfere with the primary disposition of the public lands lying within them. Nor levy any tax on the same whilst remaining the property of the United States."

On the part of the Federal Government this "express condition" of admission was deemed insufficient to bind sovereign States. Their assent and contract could not be inferred, and hence a supplemental act was passed by Congress requiring, upon good consideration, a specific and explicit contract in its terms, binding the State irrevocably.

In section 5 of the act supplemental to the act for the admission of Florida and Iowa referred to, the United States tendered to the States to be created five propositions beneficial to the State, on condition that the States should provide by ordinance, irrevocable without the consent of the United States, that the States should not do certain things, among which were these: That the States should—

I. Never interfere with the primary disposal of the soil within the same by the United States, nor with any regulation to secure title thereto to bona fide purchasers.

II. That no tax should be levied upon lands, the property of the United States.

Accepting this interpretation of what constituted, and of what was necessary to constitute, an irrevocable contract on the part of Iowa, an ordinance was adopted by

the State, January 15, 1849, accepting the consideration tendered, and expressly and specifically agreeing to the contract; and that it should be irrevocable without the consent of the United States.

In determining whether or not, under interpretation of the federal constitution, contracts have been made, the acts of legislation claimed to constitute such contracts should be viewed in the light of this interpretation when the State was created and practically contemporaneous with the enactment of the laws under consideration.

No contract is shown by plaintiff in error wherein the State of Iowa agreed to do or not to do anything with reference to control of corporations, foreign nor domestic, within her borders.

The laws and the policy of the State have always retained the right to control railroad corporations, and beneficial grants have been made to the C. & N. W. R. R. Co. and to Iowa corporations, to which it claims to have succeeded, coupled with express reservation of this power.—[Sections 1090, 1300 of Code.

The first law of Iowa mentioning railroads is found in the Code of 1851, under the then constitution. Section 735 of the Code of 1851 declares:

"The county court may also grant licenses for the construction of any canal or railroad, or any macadamized or plank road or other improvement of similar character, or any telegraph line" etc.

Section 736 declares:

"The court may at its discretion, at the time of granting the license, fix the maximum rate of toll to be charged on any such work, and may render the same unalterable for a period of twenty years."

Sections 739, 740 and 741 provide for appeals from the court, in case license is refused, to the people of the county by vote, and also for setting aside any license of the kind by vote of the people.

Section 749 provides for the *forfeiture of the license on*

failure to comply with the law; and section 779 provides that the provisions relating to condemnation proceedings or rights, do not apply to corporations or persons who have not obtained license from the proper court, as provided in the chapter relating to licenses for works of internal improvement.

Thus we find in the earliest railroad legislation of the State the very principles embodied in the law of 1886, as applicable to foreign corporations, applied to domestic ones.

After the enactment of the Code of 1851, general incorporation laws were enacted under the new and different constitutional regulations before cited, and under which no special contracts could be made exempting from legislative control.

The Cedar Rapids & Missouri River Railroad Company incorporated under the laws of Iowa, and whose line of railroad is claimed to be owned and is operated by the Chicago & Northwestern Railroad Company as a part of its line in Iowa, received a grant of land from the State of Iowa, under Chapter 1 of the acts of 5th General Assembly (special session), approved July 14, 1856; and by a subsequent act of the General Assembly of Iowa, approved March 25, 1860, referring back to the act aforesaid of the 5th General Assembly, and requiring assent in writing to the terms and conditions of the act of 1856, as follows; and to which reference is made in paragraph 17, page 22, of stipulation (printed copy). Section 13 of Chapter 1, acts of 5th General Assembly, declared: "The said companies shall each severally assent to and accept the provisions of this act by a written instrument under the seal of said corporations, with the signatures of the proper officers, within ninety days after the passage of this act, which said acceptance shall be filed in the office of the Secretary of State," etc.

SEC. 14. "Said railroad companies accepting the provisions of this act, shall at all times be subject to such rules

and regulations as may from time to time be enacted, and provided for by the General Assembly of Iowa not inconsistent with the provisions of this act and the act of Congress making the grant."

SEC. 16. "That any of said companies accepting the grants of land under this act shall take the same with the conditions imposed and incumbrances specified in this act and shall have no claim or recourse whatever upon the State of Iowa for a misappropriation of said grants, incumbrances or conditions of this act imposed."

The acceptance of the grant, with the terms and conditions named was executed as provided by law, and filed with the Secretary of State, a copy of which is annexed to the stipulation as "Exhibit D."

Under the decision of this Court in the *C. B. & Q. Railroad Co. v. Iowa*, 94 U. S. 155, the terms and conditions named in the act granting these lands binds as fully the lessees as the corporations originally accepting.

Under this reserved power of control the Legislature of the State in section 10, of chapter 169 of the laws of Ninth General Assembly, provided that any railroad having received grants of land from the State, shall transport troops of the State and nation, free in time of war, insurrection or invasion, and also wounded soldiers, when returning home.

Such power was neither taking property for public use without compensation nor impairing the obligation of contracts; because the State expressly reserved in the acts making the grant the power. Neither was it a gratuity on the part of the corporation The consideration was paid in the grants of land—valuable as empires almost, and the companies expressly agreed to subject themselves to any exactions, recoupment or control which the people of Iowa, through their legislature, should provide; and which was not expressly provided against in the acts making the grant.

There is no provision in the granting acts that corpora-

tions of other States thereafter to operate them should not be required to apply for and obtain a license from the State so to do.

By section 1, chapter 172, of the acts of the Twelfth General Assembly, "all the duties and liabilities imposed upon railroad companies by chapter 169 of the laws of the Ninth General Assembly shall apply equally to all lessees of any railroad company operating the same, within the State, as fully as if such lessee was named therein."

That is, that the lessees also must, when called upon in time of war, etc., transport troops of the State and nation free from charge, etc., and remain subject to control by the State. This company took under *these laws and after their enactment.*

Chapter 102 of the acts of the Thirteenth General Assembly (1870) provides for the enforced taxation of the people of Iowa in aid of railroads; and section 4 of that act is as follows: "All railroads constructed by or with the aid of any taxes levied and collected under the powers of this act shall be subject to the control of the General Assembly in regard to the management of the same and the charges for the transportation of freight and passengers thereon."

Chapter 119 of the acts of the Fourteenth General Assembly repeals chapter 102 of the Thirteenth General Assembly, relating to taxation in aid of railroads and enacts other means of collecting such tax; but it expressly reserves to the State the right of control in regard to management and regulating, as provided in chapter 102 of the acts of the Thirteenth General Assembly.

It is admitted in the stipulation in this case (paragraph on page 22 of printed copy) that the Maple River Railroad Company, an Iowa corporation, in the construction of its line received aid by taxation, and that in the construction of that part of the lines operated and claimed to be owned by this Chicago & Northwestern Railroad Company in Iowa, known as the "Wall Lake" and the Sauk City

Branches, aid by enforced taxation, under said laws, was received.

By receiving aid in the construction of lines of railroad in this State, by itself or other corporations, this Chicago & Northwestern Railroad Company has itself bargained for control by the State as provided in the act of the Thirteenth General Assembly cited. There is nothing left to be implied.

The right of the State to control that corporation while in the State, is not dependent upon inference; it has the contract of the company itself by acceptance of the aid, or by absorbing corporations which had.

Nor is this all:

Section 1090 of the Code of 1873 povides: "The articles of incorporation, bylaws, rules and regulations of corporations hereafter organized under the provisions of this title, or whose organization may be adopted or amended hereunder, shall at all times be subject to legislative control, and may be at any time altered, abridged or set aside by law, *and every franchise obtained*, used or enjoyed by such corporations, may be regulated, withheld or subject to *conditions imposed upon the enjoyment thereof*, whenever the General Assembly shall deem necessary for the public good."

This section of the Code, was in force when the C. & N. W. Railroad purchased or attempted to purchase their lines in Iowa by consolidation or otherwise, and it took under the law in force at *that time*. See section 1090 just quoted and also section 1300 of Code 1873.

The C. & N. W. R. R. by absorbing Iowa companies incorporated since the enactment of section 1090 of the Code, has subjected itself to the provisions of that section.

It is shown by the stipulation in this case (on pages 22 and 23 of printed copy), than the Des Moines and Minneapolis Railroad Company, was incorporated August 1, 1870. That the articles of incorporation were amended December 1, 1874 and again March 12, 1877.

That the Ottumwa, Cedar Rapids & St. Paul Railroad Company, was incorporated under the laws of Iowa, July 2, 1883 and that the articles of incorporation were amended December 18, 1883.

That the Maple River Railroad Company was incorporated June 10, 1876, under the laws of Iowa.

All of these companies were incorporated or the articles of incorporation, amended under and since the enactment of section 1090 of the Code before cited and quoted. All are as shown by the stipulation, now being operated by the Chicago & Northwestern Railroad Company, as a part of its line in Iowa.

Thus we find that from first to last; from the time when railroads were first mentioned in the laws of Iowa until to-day, the principle of State control, as the interests of the people demand, and as experience should demonstrate the necessity for, has been the law and the policy of the State, and has entered into every article of incorporation and amendment thereto, under the laws of Iowa, and into the authority of every foreign company, coming into the State. This has been authority for the control or even dissolution of every such corporation of this State and for the extinguishment of all corporate rights acquired by foreign corporations under them.

This doctrine is sustained, in its application to Iowa laws, by

Peik vs. C. & N. W. R'y., 94 U. S., 164.

C. B. & Q. R. R. vs. Iowa, 94 U. S., 155.

All that has been cited, as specific reservations of power, are out of extreme caution, and in anticipation of the times when as at present, rights, privileges or immunities should be claimed by these corporations, which there had been no intention on the part of the State to grant. Without, however, depending upon constitutional and legislative reservations of power in express terms, we maintan that as to the

I.

IMPAIRMENT OF THE OBLIGATION OF CONTRACTS.

Nothing can be so construed with reference to the control of railroad corporations or corporations of other States, unless the charter or legislative act under which they claim, contains an express contract to that effect, based upon good consideration.

This position is so well settled by this court, and has been expressed in language so applicable, that our best arguments are quotations from the opinions of the court.

Bearing in mind the constitution and laws of Iowa under which all corporate rights have been acquired, we quote from the opinion of this court in the case of

Peik vs. C. & N. W. R. R., 94 U. S., 164.

"The constitution of the State in force when each of the several acts of incorporation were passed, provided that all acts for the creation of corporations within the State may be altered or repealed by the legislature at any time after their passage."

This would apply as well to the laws in force as to the provisions of the constitution.

Speaking further of the reserved power to alter or repeal charters of Wisconsin containing special privileges, the court say: "Without stopping to inquire whether this is the extent of the operation of this important constitutional reservation, it is sufficient to say that it does without doubt have that effect. In *Munn vs. Ills.* (*ante* 77), and in *R. R. Co. vs. Iowa* (*ante* 94), we have just decided that the State may limit the amount of charges by railroad companies for fares and freights unless restrained by some contract in the charter, even though their income may have been pledged as security for the payment of obligations incurred upon the faith of their charters." On this last point see also *C., B. & Q. R. R. Co. vs. Iowa*, 94 U. S., on page 155. In the latter case this court say:

"It was within the power of the company to call upon the legislature to fix permanently this limit (meaning of fares and freight charges) and make it a part of the charter, and if it was refused, to refrain from building the road and establishing the contemplated business. If these had been done, the charter might have presented a contract against future legislative interference. But it was not; and the company invested its capital relying upon the good faith of the people and the wisdom and impartiality of legislators, for protection against wrong, under forms of legislative regulation."

In using this language the court overlooked the fact that the Constitution of Iowa does not permit such a contract to be made with a corporation by making it a part of their charter. Their rights come only under the general law. The State requires all who engage in such enterprises to rely "upon the good faith of the people and the wisdom and impartiality of legislators, for protection against wrong under the form of legislative regulation."

The charters referred to are the charters of the Iowa companies comprising Iowa lines of the corporation interested in this action, and in the last cited case the court further say: "Neither does it alter the case that before the power was exercised, the company had pledged its income as security for the payment of debts incurred; and had leased its road to a tenant that relied upon the earnings for the means of paying the agreed rent. The company could not grant or pledge more than it had to give. After the pledge and after the lease the property remained within the jurisdiction of the State and continued subject to the same governmental powers that existed before."

C., B. & Q. R. R. Co., v. Iowa, 94 U. S. *supra.*

It is urged too, in behalf of the Chicago & N. W. Railroad by the plaintiff in error, that the company is under obligation to the United States, by reason of the land

grant act. With reference to the same plea by this company in the case of *Peik v. The C. & N. W. R'y.*, 94 U. S., *supra*, this court declared that: "The obligation of the consolidated company under the land grant, &c., to keep that part of its road open as a public highway for the use of the government of the United States, free from toll or other charges upon the transportation of troops of the United States, and to transport mails at such price as Congress may decide. The United States do not complain. It will be time enough for us to consider this objection when they do."

In construing Iowa laws as applicable to Illinois corporations, the laws and policy of Illinois should be proper matter for consideration. There is no jealousy in Iowa of Illinois, her citizens nor corporations; but good reason for law and policy of that State cannot consistently be complained of by corporations created by Illinois, when applied to them by Iowa.

In the case of *Chicago Life Ins. Co. v. Needles, Auditor*, 113 U. S., 574, this court say: "Although not expressed in the charter, it is implied that legislative control in the interest of the people and equity is retained, and that the corporations are subject to regulation; otherwise they would become dangerous to the public welfare. * * And winding up and prohibiting transaction of business by such corporations when destructive of the interests of the State *is no impairment of contract.*"

"Grants of immunity from legislative control are never presumed; the presumptions are all the other way."

Ruggles vs. Illinois, 108 U. S., 541.

"Laws altering charters, when passed under general powers reserved to amend, alter or repeal charters, do not impair the obligation of contract."

Tomlinson vs. Jessup, 15 Wall., 454.

Millne vs. State, 15 Wall., 478.

Holyoke vs. Lyman, 15 Wall., 500.

Sherman vs. Smith, 1 Black., 587.

In the case of *C., B. & Q. vs. Cutts* (Iowa), 94 U. S., 155, substantially the same defenses against the then Iowa law were urged that are urged against this of 1886, to-wit:

1. That the charters of the original companies constituted contracts between them and the States.

2. That under the law originally the company could fix charges, and that this was a valuable part of the contract which the State could neither impair nor take away.

3. That the law impaired contracts between the company and stock and bondholders and mortgagees, and contracts between lessors and lessees.

4. That it was prohibited by the Fourteenth Amendment to the Federal Constitution.

5. That it attempted to regulate commerce between the States, over which Congress had assumed control by statute of June 1, 1866.

These questions were in that case—which affected commerce, contracts and value of the property to an immeasurably greater extent than this—determined in favor of the law, and it was sustained.

The case of *Dartmouth College vs. Woodward*, 17 Wheat., 517, is in full accord with our position. That was a private eleemosynary institution with specifically defined rights and powers named in the charter. As a private institution it was not subject to the legislative control that public ones in the nature of railroads are.

"There are few laws which concern the general police of the State, or government of its citizens in their intercourse with each other or with strangers, which may not in some way or other affect the contracts which they have entered into or may thereafter." * *

Bronson vs. Kinzie, 1 How., 316.

"And it does not impair it (the obligation of contract),

provided it leaves the parties a substantial remedy as it vested at the time the contract was made."

Cooley's Const. Lim., 3d Ed., 285, 286, 287.

"After being licensed the tax upon a foreign corporation may be increased notwithstanding the license is outstanding, and this is no impairment of vested rights nor contract, for there was no contract not to increase the tax."

Home Ins. Co. vs. City Council of Augusta, 3 Otto, 120.

In *Jackson vs. Lamphire*, 3 Pet., 289, language is used strikingly applicable to this case. The Court say concerning a grant of land:

"The only contract made by the State is the grant to John Cornelius, his heirs and assigns, of the land in question. The patent creates no covenant to do or not to do any further act in relation to the land, and we do not feel ourselves at liberty in this case to create one by implication.

"The State has not by its act impaired the force of the grant. It does not propose to attempt to take the land from the assignees of Cornelius and give it to one not claiming under him. Neither does the award produce that effect. The grant remains in force. The property conveyed is held by the grantee and the State asserts no claim to it."

The same rule is applied also in *Beaty vs. Lessees of K.*, 4 Pet., 168.

The same state of fact exists here. If under the reserved power of the State all corporate rights were dissolved, the property, with the right to operate it, would belong to the stockholders. Thus:

1. There is no taking of private property; it is only controlling the franchise, which is not private property.

Being able to use their property and as individuals to operate the railroad.

2. There is no interference with commerce. The regulation is only of the exercise of a franchise.

3. As individuals, if one stockholder was a resident of Iowa, no action could be removed from State courts and no jurisdiction of Federal courts would obtain in litigation with citizens of Iowa.

"Powers which a community are interested in preserving will not be held surrendered by statutory grant, unless such intent is in the plainest words."

Ohio Life Ins. Bo. vs. Debolt, 16 How., 416.

"The United States has no right nor power to regulate the status of local, nor foreign corporations in States, nor prescribe the terms of their continuance. That is a matter of local self government."

New York vs. Miln, 11 Peters, 102.

License Cases, 5 How., 528.

The State could not take the property of this corporation and give it to another. This was the precise point in the Dartmouth College case. The attempt there was to take the property from the trustees provided by the charter and vest it in trustees appointed by the State. The one is a taking of the property; the other is the prohibition of its use detrimentally to the State.

FOREIGN CORPORATIONS.

A foreign corporation has no rights outside of the State creating it, except by comity, or as permission is granted by legislation.

"A corporation exists only in contemplation, and by force of law, and has no legal existence beyond the bounds of the sovereignty creating it."

Ohio & M. R. R. Co. vs. Wheeler, 1 Black., 286.

And can do no corporate act in another State except by the express or implied consent of the latter.

Paul vs. Virginia, 8 Wall., 168.

Doyle vs. Continental Ins. Co., 94 U. S., 540.

As to all acts done under the laws of the State, foreign corporate powers are only those of domestic corporations.

P. R. R. Co. vs. People, 31 Ohio St., 537.

"Having no absolute right of recognition in other States, but depending for such recognition and enforcement of contracts upon their assent, it follows as a matter of course that such assent may be granted on such terms and conditions as other States may think proper to impose. They may exclude the foreign corporation entirely, or may restrict its business to particular localities, or they *may exact such security for the performance of its contract with their citizens as in their judgment will best promote the public interest.*"

Insurance Co. vs. Morse, 20 Wall., 488.

La Fayette vs. French, 18 How., 407.

Bank of Augusta vs. Earle, 13 Pet., 519.

This latter ground is precisely what Iowa seeks to secure by this law.

The State of Iowa has never consented to permit foreign railroad companies to control the railroads of Iowa corporations, except by their becoming as to business in Iowa, Iowa corporations.

The Chicago & Northwestern Railroad Company claims to be, and in fact carries on its business in Iowa as a foreign corporation. It claims to have irrevocable power so to do, and cites section 1300 of the Code of Iowa as its authority. We maintain that it never purchased a railroad in Iowa, but that whatever rights it has there, were secured under section 1275 of the Code; that that section does not authorize a railroad corporation of another State to do what this company has done, without making it a domestic corporation in Iowa. If this be true, then the company certainly has no contract with the State as a foreign corporation. Section 1275 of the Code was the law long before the enactment of section 1300. Section 1275

prescribes the manner in which merging of railroad corporations may be accomplished, and declares what the effect will be—*i. e.*, the formation of one joint stock company. Under section 1300 alone, no rule is given by which such transfer or consolidation can be accomplished, and it contains no declaration as to results. In order to buy, as this company claims to have done, the manner in which the change could be made is found in section 1275 only.

A franchise to be a corporation in Iowa can only be acquired by a law which also fixes the manner of its exercise.

Memphis R. R. Co. vs. ——, 112 U. S., 609.

Section 1275 fixes the manner in which a foreign corporation can acquire a franchise to be a corporation in Iowa, and it also fixes the manner in which that right can be exercised, to-wit, by securing assent of three-fourths of the stockholders in the Iowa company, and by becoming in Iowa an Iowa corporation by merging two or more corporations into one joint stock company. Though section 1300 was enacted later (in 1873), it does not repeal the provisions of section 1275, and admitting, for argument's sake only, that section 1300 relates to *foreign corporations*, there is nothing in it inconsistent with section 1275. Then if, after the enactment of both, a foreign corporation desired to buy the franchise and property of an Iowa railroad company it would (if we admit the authority under section 1300 claimed by the corporation) be compelled to look to both of those sections for authority—

First. To section 1275, to ascertain the part of the stockholders whose assent would be required to make such change valid.

Second. To ascertain what the status of the foreign corporation would be in Iowa; or in other words, how the consolidated rights should be used.

As shown hereafter under this head, this is exactly what was done. Aye, more than that: the record dis-

closes the fact conclusively that there was no *sale;* but it was simply a merger of the two companies, by issuing stock in the consolidated company to the holders of the stock of the Iowa company. As a consequence, if section 1300 be taken into consideration, it must be in connection with, and as modified and controlled by section 1275.

It is legitimate for us to urge this, for if our position be correct, then there is no contract nor legislation authorizing the Chicago & Northwestern Railroad Company to operate roads in Iowa, as a foreign corporation.

If this court shall go farther than to determine that there was no contract, and shall declare that the Chicago & Northwestern Railroad Company is already, through consolidation, an Iowa corporation in Iowa, we shall be content. That would more than accomplish the purpose of law of 1886, and of this action.

The first authority for connecting and consolidating railroads in this State, Chapter 159 of the acts of the 5th General Assembly of Iowa, approved January 25, 1855, entitled—

AN ACT to authorize railroad companies to consolidate their stock with the stock of railroad companies in this, or an adjoining State, and to connect their roads with the roads of said companies.

"SECTION 1. *Be it enacted by the General Assembly of the State of Iowa*, That any railroad company heretofore organized or that may hereafter organize under the laws of this State, shall have the power to intersect, join and unite their railroads, constructed or to be constructed in this State, or in any adjoining State, at such point on the State line, or at any other point, as may be mutually agreed upon by said companies. And such railroads are authorized to merge and consolidate the stock of their respective companies, making one joint stock company of the railroads thus connected, upon such terms as may be by them mutually agreed upon and in accordance with the laws of the adjoining State with whose road or roads

connections are thus formed. *Provided*, that the consent of three-fourths of all the stockholders, in amount in any road whose stock is proposed to be consolidated, shall so consent."

That consolidation of the various Iowa companies composing the Chicago & Northwestern lines in Iowa, was made under this law and its successors section 1332 of the revision, and section 1275 of the Code of 1873, is shown from the acts of the companies and recitals in the exhibits "A" at page 24 and "B" at page 27, printed record.

First. Requiring and recording assent of three-fourths of the stockholders as required when stock is consolidated under chapter 159, acts of Fifth General Assembly, and section 1275 of the Code, and which is not required by section 1300 of the Code, and which is not required by the law of Illinois authorizing the company to come into Iowa.

Second. By reciting consideration as being in stock of the purchasing company which in itself is *no* purchase, but a merger and consolidation only.

Section 1300 of the Code, under which it is for the purposes of this case claimed by the plaintiff in error that the Chicago & Northwestern Railroad Company obtained control of the Iowa roads does not require the assent of three-fourths of the stockholders, and does not recognize consolidation as a sale. And yet it matters not if this company took under this section, the clause with which the section and permission ends, is "subject to the laws of this State." The right is then reserved by the State to subject the purchasing or leasing company to the laws of the State, one of which was section 1275 of the Code, and another is the law under consideration, the law of 1886.

It cannot be seriously claimed that the laws of this State to which such purchasing or leasing company should be subject, meant only the laws then in force. Upon the claim of the Chicago & N. W. Railroad Com-

pany, section 1300 is the contract being impaired by the law of 1886. The express terms of that so called contract subjects it to the laws of the State. This is sustained fully I believe by abundant authority.

"A corporation endowed with the capacity it possesses by the co-operative legislation two States, cannot have one and the same legal bearing in both States."

Ohio & N. R. R. Co. vs. Wheeler, 1 Black., 286.

Graham vs. Boston, Hartford & Erie Co., 118 U. S., 161.

II.

CORPORATIONS OF OTHER STATES ARE NOT CITIZENS WITHIN THE MEANING OF THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

Paul vs. Virginia, 8 Wallace, 169.

For the provision of the Constitution of the United States "that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States cannot be applied to corporations of other States."

Liverpool Ins. Co. vs. Mass., 10 Wall., 566.

Paul vs. Virginia, 8 Wall., 169.

Ducat vs. Chicago, 10 Wall., 410.

The last cited case is one from Illinois, determining that that State may require foreign insurance companies to obtain license as a condition on which they may do business in that State. If Illinois may require that of Iowa corporations why may not Iowa require it of those created by Illinois.

This rule has been recently affirmed in this court in *Fire Association of Phil. vs. The People*, October term, 1886.

"It has been held without dissent that this clause (14th amendment to Federal Constitution) does not so far remove from State control the rights and properties which

depend for their existence or enforcement upon contracts as to relieve them from the operation of such general regulations for the good government of the State, and the protection of the rights of individuals, as may be deemed important. All contracts and all rights, it is declared, are subject to this power, and not only may regulations which affect them be established by the State, but all such regulation must be subject to change from time to time as the general well being of the community may require, or as circumstances may change, or as experience may demonstrate the necessity."

Cooley's Const. Lim., 3d Ed., 474, 475.

If within the limits of the Constitution the desirability of the law can only be determined by the legislature.

Cooley's Const. Lim., 5th Ed., 342, 343, 370.

In other cases, where this court has treated of corporations as citizens under the Fourteenth Amendment to the Federal Constitution, it is found to be applied to corporations of the State whose laws were under consideration. Thus it was held that in California, California's corporations were citizens, protected by the Fourteenth Amendment. See

Santa Clara Co. vs. Southern Pacific Co., 118 U. S., at p. 396.

The County of San Marengo vs. Southern Pacific Co., 8 Sawyer, 238.

The Santa Clara Railroad Tax Case, 9 Sawyer, 165.

It was claimed in the argument of this case in the court below, as well as here, that the Chicago & Northwestern Railway Company had a license to operate its roads in Iowa prior to the enactment of the law of 1886, and that it cannot be required to take out a permit under that act.

We admit that this company was, prior to the act of 1886 in question, permitted or licensed to carry on business in the State of Iowa. Whether it was licensed to buy railroads and corporate franchises and to operate the roads as a corporation of Illinois, will be discussed elsewhere; but,

A license by a State is always revocable.

"A license to a foreign corporation to enter a State does not involve a permanent right to remain, subject to the laws and Constitution of the United States. Full power and control over its territory, its citizens and its business belongs to the State."

Doyle vs. Continental Ins. Co., supra.

"Licenses to sell liquor are not contracts between the State and the licensee, giving the latter vested rights protected on general principles or by the Constitution of the United States. * * Such licenses are temporary permits to do that which would otherwise be unlawful, and are not property in any legal or constitutional sense. They form a portion of the internal police system of the State and are subject to the discretion of the State government, which may modify, revoke or continue them as it may deem fit."

Metropolitan Board of Excise vs. Barrie, 34 N. Y., 657.

The correlative power to revoke or re-call a permission is a necessary consequence of the main power. A mere license by a State is always revocable.

Doyle vs. Continental Ins. Co., supra, citing:

Rector vs. Philadelphia, 24 How., 300.

People vs. Roper, 35 N. Y., 629.

People vs. Commissioners, 47 N. Y., 501.

And further, "The power to revoke can only be restrained, *if at all*, by an explicit contract upon good consideration to that effect." Citing:

Humphreys vs. Pegues, 16 Wall., 244.

Tomlinson vs. Jessup, 15 Wall., 454.

No consideration for contract or license to this company is shown, and as against a State none can be inferred.

"The cases of *Bank vs. Earle*, *Ducat vs. Chicago*, *Paul vs. Virginia* and *Insurance Co. vs. French* established the principles that a State may impose upon a foreign corporation as a condition of coming into, or doing business within its territory, any terms, conditions and restrictions it may think proper, that are not repugnant to the constitution or laws of the United States."

Doyle vs. Continental Ins. Co., 94 U. S., *supra*.

In this case it is determined and adjudged that the condition imposed, to refrain from removal of causes to the Federal courts, was constitutional.

That one case, with the authorities therein cited, should be conclusive in this. Excepting only that of inter-State commerce, no point is involved in this action which was not determined there. The insurance company was doing business in Wisconsin by permission of the State before the enactment of the law. It alleged that if the law were enforced, irreparrable damage would be done it. Notwithstanding that the court say of the law and the right of the State to require compliance with it, that "this is justifiable, because the complainant has no constitutional right to do business in the State. The State has authority at any time to declare that it shall not transact business there. This is the whole point of the case."

Doyle vs. Continental Ins. Co., supra.

It cannot be assumed that this law of Iowa was enacted to do injustice to these corporations. The fact that the

laws and the courts which have in keeping the every interest of Iowa's citizens and corporations will be open to the foreign corporations on compliance with it, marks no unjust design. That only an equality before the law for citizens, domestic and foreign corporations is required, mark it as an equitable and just law.

The alternative is the only one left the State to apply. It is merely a method of enforcing equity. It is no more harsh than a law which for its violation takes from a citizen in fines, or which imprisons him.

The hardships to our citizens under the present system of litigating with foreign corporations have been too patent to need elaboration here. Their property and their lives, under Iowa's laws and the mandates of her courts, were and are pledged to the protection and defense of these corporations. Surely this Chicago & Northwestern Railway Company ought not to complain of the attitude of Iowa toward itself. The State offers it equality with its own corporations. At the same time it will be seen by reference to page 20 of the stipulation, that by the law of Illinois, under which this company came into Iowa, the railroad corporations of Iowa were wholly excluded from that State. Such exclusion is doubtless a legitimate exercise of the power of the State. The policy of Iowa is more liberal.

In the case of *The Charles River Bridge Co., v. The Warren Bridge Co.*, 11 Peters, 547. In the opinion by Chief Justice Tany, the following language is used: "The continued existence of a government would be of no great value, if by implications and presumptions, it was disarmed of the powers necessary to accomplish the ends of its creation, and the functions it was designed to perform, transferred to priviledged corporations."

An examination of *Pensacola Telegraph Co. v. West. Union Telegraph Co.*, 96 U. S. 1, cited by plaintiff in error, in which a distinction is sought to be drawn between *Doyle v. Insurance Co., supra*, and a corporation engaged

in inter-State commerce, shows that contrary to an act of Congress a State cannot create an absolute monopoly of the telegraph business (Justices Field and Hunt dissenting.) But so far as that case determines anything involved in the case at bar, it is in accord with the position of the State. The following language is used: "Upon principles of comity the corporations of one State are permitted to do business in another unless in conflict with the law, or unjustly interferes with the rights of the citizens of the State into which they come. Under such circumstances, no citizen of a State can enjoin a foreign corporation from pursuing its business. The State must determine for itself when public good requires that its assent shall be withdrawn."

Pensacola Tel. Co. v. Western Union Tel. Co., supra.

The State of Iowa appears as the party here, enforcing the law. "A State has a right to impose conditions not in conflict with the Constitution and laws of the United States, on the transaction of business within its territory by an insurance company chartered by another State, or to exclude such company from its territory, or having given a license, to revoke it with or without cause."

Doyle v. Continental Ins. Co., supra.

"If the State has power to do an act, the intention or reason by which it is influenced into doing it cannot be inquired into."

All license laws prohibit the doing of business except in compliance with them, so that this is no exception. The prohibition is merely a method of enforcing the law.

Home Ins. Co. v. City Council of Augusta, 3 Otto, 120.

Cooley's Const. Limitation 5th Ed., 745, 746.

Police Powers.—This law is within the police powers of the State over which it has exclusive jurisdiction.

"Police powers in a comprehensive sense, embraces the whole system of internal regulation of the State

by which it seeks to preserve the public order, prevent offenses against the State, to prevent conflict of rights, to give to each that full measure of enjoyment of his own so far as is reasonably consistent with a like enjoyment of rights by others, and this, like taxation, pervades every department of business and reaches to every interest and every subject of profit and employment."

Cooley's Constitutional Limitations, 5th Ed., 706.

"All property in the commonwealth is held subject to these general regulations, which are necessary to the common good and welfare.

"This power is vested by the Constitution in the legislature and differs from the right of eminent domain; the right to take private property for public use, only on condition of payment therefor."

Cooley's Constitutional Limitations, 5th Ed., 707.

"The legislature is vested with power to establish such reasonable laws, not repugnant to the Constitution, as they shall see fit for the welfare of the people.

"It is easy to perceive the necessity for this rule, while its limits have not been defined."

Cooley's Constitutional Limitations, 5th Ed., 708, and cases cited.

"By this general police power of the States, persons and property are subjected to all kinds of burdens and restraints in order to secure the general health and prosperity of the State, and the perfect right of the legislature to do this has not been questioned, nor upon acknowledged general principles can be so far as natural persons are concerned."

Cooley's Constitutional Limitations, 5th Ed., 708, citing:

Thorpe v. Rutland & B. R. R. Co., 27 Vt., 140.

Munn v. Ill., 94 U. S., 124.

And neither the power itself, nor the discretion to exercise it as need may require, can be bargained away by the State.

Cooley's Constitutional Limitations, 5th Ed., 708.

Beer Co. vs. Mass., 97 U. S., 25–33, citing:

Boyd vs. Alabama, 94 U. S., 645.

Bartemyer vs. Iowa, 18 Wall., 129.

Moore vs. State, 44 Miss., 147.

Metropolitan Board of Excise vs. Barrie, 34 N. Y., 663.

And a legislature cannot contract away the right to repeal its laws.

Byod vs. Alabama, 94 U. S., at page 650.

This power cannot be taken from the States, either wholly or in part, and exercised under legislation of Congress.

Cooley's Constitutional Limitations, 5th ed., 708.

U. S. vs. De Witt, 9 Wall., 41.

U. S. vs. Reese, 92 U. S., 214.

U. S. vs. Crookshanks, 92 U. S., 542.

De Witt, 9 Wall., relate to illuminatig oil regulation by Congress.

"When the owner devotes property to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must to the extent of that interest submit to control by the public for the common good as long as he maintains the use." * *

Munn vs. Illinois, 94 U. S., 124.

The operating of warehouses already erected may be prohibited, except after obtaining a license provided for

by new legislation. The court in the case of *Munn vs. Illinois*, 94 U. S., *supra*, in regard to a warehouse engaged in State and inter-State commerce, and in which one of the able counsel appearing here for plaintiff ine rror, appeared then for the warehouse, say:

"It matters not that these plaintiffs in error had built their warehouses and established their business before the regulation was adopted. What they did, was from the beginning subject to the power of the body politic to require them to conform to such regulations as might be established by the proper authorities for the common good. They entered upon their business and provided themselves with the means to carry it on, subject to this condition. If they did not wish to submit themselves to such interference they should not have clothed the public with an interest in their concern." * *

"For our purposes, we must assume that if a state of facts could exist that would justify such legislation, it actually did exist when the statute now under consideration was passed. For us, the question is one of power, not of expediency. If no state of circumstances could exist to justify such a statute, then we may declare this one void, because it is in excess of the power of the State. But if it *could*, we must presume it did."

"Of the propriety of legislative interference, within the scope of legislative power, the legislature is the exclusive judge."

Again: "We know that this is a power which may be abused; but this is no argument against its existence. For protection against abuses by legislatures the people must resort to the polls, not to the courts."

Of the warehouses the court say:

"They are used as instruments of those engaged in State as well as those engaged in inter-state commerce, but they are no more necessarily a part of commerce itself than the dray or the cart by which, but for them, grain

would be transferred from one railroad station to another."

Munn vs. Ill., 94 U. S., *supra.*

Powers of government are not lost by nonuser.

Chicago, B. & Q. R. R. vs. Cutts (Iowa), 94 U. S., 155.

Peik vs. C. & N. W. R. R. Co, 94 U. S., 164.

"Nor does it matter that the company has pledged its earnings to secure debts incurred."

Chicago, B. & Q. R. R. vs. Iowa, supra.

This right on the part of the State "arises from the simple fact that they (meaning railroads) are its own works or constructed under its authority. It gives them being."

Railroad Company vs. Maryland, 21 Wall., 471.

In the case of *Fuller vs. Chi. & N. W. R. R.*, 17 Wall., 566, which arose over chapter 169, section 2, of the acts of 9th General Assembly of Iowa, requiring the fixing of tables of charges for transportation on railroads and posting the same in depots, and a law so nearly akin to the law of 1886 as to merit close comparison.

The Court say on page 208:

"This in no manner interferes with commerce or transportation, but leaves it just as untrammelled as before."

"The regulation being to the extent of preventing abuses, injustice and oppression toward the people * *. It is intended simply for protection of the people of the State, and in its practical operation has no other effect, and in this view is a police regulation indisputably within the scope of the authority of the State."

Fuller vs. Chi. & N. W. R. R., 17 Wall., *supra.*

On the trial of the same case in the Supreme Court of Iowa, 31 Iowa, 201–211, in the opinion construing the law, the court say that "its design is to protect the citizens from imposition."

In that statute, sustained by this court, domestic and foreign corporations were required to do the certain things named as a condition under which they should be exempt from the penalties imposed; penalties as great or greater than those imposed in the law of 1886. The cases are so clearly parallel as to admit of no distinguishable difference in principle.

Because that law was designed to protect the citizens from imposition it was sustained as a police regulation.

If the "design" of the law of 1886 is to protect the people of Iowa from imposition or oppression, or to promote the general peace and well being of the State, then this law of 1886 must be sustained as a police regulation.

III.

THE PLAINTIFF IN ERROR CONTENDS THAT THE ONLY OBJECT OF THE LAW IS TO PREVENT THE REMOVAL OF CAUSES BY THESE CORPORATIONS TO THE FEDERAL COURTS, AND THAT IT IS THEREFORE VOID.

In the language of this court in *Doyle vs. Continental Ins. Co.*, 94 U. S., *supra*, "this is an inexact statement."

The statute does not attempt to prevent the removal of causes to the Federal court; it cannot do that—but it provides that corporations of other States which do so remove their causes shall not be permitted to transact business in the State. From such as do not comply with its provisions it withdraws its license to transact business.

If, through the practice of removing their causes from the State to remote Federal courts, the people are aggrieved and oppressed, then independent of any right to exclude foreign corporations, or revoke their license to transact business within the State, the general right to legislate for the welfare of the people would be sufficient to remedy the evil, for "no one has a vested right to do wrong." The right of the people to protection lies at the foundation of government. If the State has a right to do this, the motive cannot be inquired into.

"Police regulations while they may effect commerce and operate upon those engaged in it are not obnoxious to the Constitution of the United States. Quarantine and health laws by which vessels engaged in commerce may be delayed weeks in completing their voyages, or cargoes may be seized and destroyed and soldiers and sailors of the United States imprisoned and punished for their violation, are constitutional."

State Tax Cases, 15 Wallace, 293.

Osborn vs. Mobile, 16 Wallace, 479.

Recording acts, whereby a prior executed deed is postponed to a junior, if the prior deed is not recorded within a limited time, and limitation laws are within the power of the State to pass.

Jackson & Hart vs. Lamphere, 3 Pet., 280.

A law prohibiting sales of intoxicating liquor on Sunday and forfeiting the offenders license to sell, on a second conviction is not in violation of the Federal Constitution, but only a police regulation of the State.

Bode vs. State, 7 Gil. (Md.), 326.

"Irrevocable grants of property and franchises may be made if they do not impair the supreme authority to make laws for the right government of the State, but no legislature can curtail the power of its successors to make such laws as they may deem proper in matters of police."

Metro. Board of Excise vs. Barrie, 34 N. Y., *supra*, citing a long list of authorities; and

New York vs. Miln, 11 Peters, 102.

Cooley's Const. Lim., 5th Ed., 149, 150, 743 to 746

Thorpe vs. Railroad Co., 27 Vermont, 140.

C. J. Marshall, in Dartmouth College case, said:

"The framers of the constitution did not intend to restrain the States in the regulation of their civil institu-

tions, adopted for internal government, and that the instrument they have given us is not to be so construed."

A statute prescribing the mode of serving process on a railroad company differing from that in the charter, is constitutional; the power of the State to regulate forms of justice is an incident of sovereignty.

Railroad Co. vs. Hecht, 95 U. S., 168.

This statute of 1886 provides that the corporations shall in their application for license, stipulate that service of process may be made on other agents than those before named in the law. Are not the corporations required to comply with this?

It also provides that until such permit is obtained they shall not exercise the powers of eminent domain. Has not the State a right to deny this to foreign corporations? It is the highest power of the State. Can corporations of other States continue to exercise it in violation of express prohibition by the legislature?

Whether prohibited acts shall be made criminal, punishable under general laws, * * or, on the other hand, the party be deprived of all remedy for any right, etc., are questions which the legislature must decide.

Cooley's Const. Lim., 5th Ed., pages 745-746.

Police power as defined by the Supreme Court of the United States, is every law "which concerns the welfare of the whole people of the State or any individual within it, whether it respects them as men, or as citizens of the State in their public or private relations; and whether related to the rights of persons or of property; of the whole people of the State or of any individual of it, and whose operation was within the territorial limits of the State and upon the persons and things within its jurisdiction."

New York vs. Miln, 11 Pet., 103, cited and applied in *Gibbons vs. Ogden*, 9 Wheat., 204.

Can it be said that these corporations and plaintiff in error do not come within the language of this definition?

"The constitutional prohibition upon State laws impairing the obligation of contracts, does not restrict the power of the States to protect the public health, morals or the public safety as the one or the other may be invaded in the execution of such contract."

New Orleans Gas Light Co. vs. Louisiana Light Co.,
6 U. S. Supreme Court Reporter, 252.

The entire contention of plaintiff in error is, that these corporations, their property and business are as free from State control as are vessels on the high seas or navigable rivers.

In *Illinois Central R. R. Co. vs. C., B. & N. R. Co.*, 26 Federal Reporter, page 479, Judge Gresham says of the Illinois Central Railroad:

"It is the creature of the State, which denies the right of the State to exercise the asserted authority over its right of way. This corporation acquired its rights, including its right of way directly from the State. It cannot be assumed that the State of Illinois, in accepting the Congressional grant, intended to relinquish absolutely its authority over so large a portion of its territory as was granted for right of way."

Vessels on the high seas and on navigable rivers, derive no powers from the State. They are not dependent on States for protection. Are not subject along their routes of travel to taxation. The contrary is true of railroads. They derive their very existence from the State. They are dependent upon the State for police protection and are subject to State taxation.

The right of the State to legislate for the well being of its inhabitants, its right to go to the length necessary for this, is denied by plaintiff in error. This right exists as a sovereign power, even where foreign commerce by vessels is concered.

In the case of *Morgans, Louisiana & T. R. and S. S. Co. vs. Board of Health*, 6th U. S. Supreme Court Reporter, 114, the quarantine law of Louisana imposing a charge of $30 on vessels passing up the river to New Orleans was sustained, and the court say: "Whether these precautions were judicious or not, this court cannot inquire. They are a part of and inherent in every system of quarantine. If the law did not make this provision for ascertaining freedom from infection *it would be compelled to enact more stringent* and expensive penalties against the vessel herself when it was found that she had come to the city from an infected or contagious port, etc. The State now says, you must submit to this examination; if free from objection you are relieved by the officer's certificate from all responsibility on the subject.

"Police laws for the protection of the community from nuisance and dangers, and regulations for the proper administration of public affairs, and the *easy attainment of justice*, have universally been held valid. All ordinary contracts are subject to these general legislative powers of the State, and no other rule is applicable to the contracts by which private corporations are formed."

Morawetz, vol. 2, 2d ed., part pár. 1065.

Mr. Morawetz has been cited by plaintiff in error. Paragraph 1066 of his works, 2d Ed., is so comprehensive and covers this right so completely that we insert it here in part: "If a particular kind of business or employment is of such a character or of such magnitude that the public are directly interested in its proper management, it falls within the legislative duties of the government to regulate the same.

"And under these circumstances the legislature cannot be ousted from its proper sphere of action by the fact that a number of individuals have agreed to form a co-partnership or a corporation for the purpose of carrying on the business in question.

"Thus the public are interested in a very high degree in the proper management and operation of railroads; and hence the legislature may make rules and regulations for the proper management and operation of railroads, whether they be owned and operated by corporations or not. The power of legislative interference is *much more limited* in cases of companies carrying on employments in which the public are less directly concerned, such as manufacturing or buying and selling. *The constitutionality of the question usually depends upon the answer to the question, was the legislation designed to accomplish some object of public interest?*

"Whether a statute is constitutional or not, is always a question of power; that is, a question whether the legislature in the particular case, in respect to the subject matter of the act, the manner in which the object is sought to be accomplished, and the mode of enacting it, has kept within the constitutional limitation and observed the constitutional conditions. In any case in which this question is answered in the affirmative, the courts are not at liberty to inquire into the proper exercise of this power. They must assume that legislative discretion has been properly exercised. If evidence was required it must be supposed that it was before the legislature when the act was passed; and if any special finding was required to warrant the passage of the particular act, it would seem that the passage of the act itself might be held equivalent to such finding."

Munn vs. Illinois, supra.

Cooley's Constitutional Limitations, 4th Ed., p. 225; see, also, pp. 220, 221 and 222.

The right of the federal courts, at the suit of a citizen of a State, to review the statute of the State, purporting to establish a police regulation, and to adjudge it void, if in their opinion it wrongfully abridged the right of a citizen to follow a lawful employment, was denied in the Supreme Court of Louisiana, and in this court.

Live Stock Association, etc., vs. Crescent City, etc., Co., cited in Cooley's Constitutional Limitations, 3d Ed., 573, note 3, citing Story on Constitution, appendix to volume 2.

Congress has no power to authorize a business within a State which is prohibited by the State.

License Cases, 5 How., 471, per Chase, Ch. J.

IV.

THIS LAW DOES NOT REGULATE NOR ATTEMPT TO REGULATE COMMERCE WITH FOREIGN NATIONS NOR BETWEEN THE STATES.

That one State may exclude the corporations of another State from carrying on business within its borders has been repeatedly affirmed by this court.

The contrary has never been declared, excepting in the case of vessels owned by corporations navigating rivers, or tide waters within a State.

The character of the commercial highway is that which determines the original jurisdiction over it.

Over navigable waters, natures' highways, the original jurisdiction is in Congress, under the Federal Constitution.

Over land, including the highways thereon, within a State, the original jurisdiction is in the State.

This arises from the fact that such artificial highways can only be created by the authority and power of the State.

Dominion over the territory occupied by them, was in the State before their construction. This dominion has never been parted with, and indeed cannot be aliened.

This position is fully sustained, and the reasons therefor, given in the case of the *Baltimore and Ohio Railroad v. Maryland*, 21 Wall, 456, and on principle, the Chicago and Northwestern Railroad Co. is equitably estopped to

controvert it, for the very law of Illinois authorizing it to go into Iowa, denied to Iowa railroad corporations the right to go into Illinois for the same purpose. See page 20 of stipulation (printed record) for Sec. 1 of act of March 30th, 1875, of the General Assembly of Illinois.

If railroad corporations have no right under federal authority to go into States other than those creating them, and by use of the power of the State invaded; and against its consent, build and operate railroads; then the only right by which it can be done, is the consent of the States into which they go.

Whether or not the United States can, through the exercise of its own powers, and through corporations of its own creation; build railroads through the States for the transaction of its own business and inter-State commerce, seems not to have been determined yet.

I do not deny that power. I do, however, maintain this: That it could only be done by a corporation endowed with the power of the federal government, and for the specific purposes named. It could not so far subordinate the dominion of one State, through the creature of another.

Neither could it endow such a corporation of its own creation with power to do that which this corporation was doing through the plaintiff in error as its agent when arrested, to-wit, carry on domestic transportation.

Leaving out of consideration for the present all question of contract rights of this corporation in Iowa, we ask, had it a constitutional right to come into this State and do what it has done, except by the consent of the State? If it had, then the power of a foreign corporation is greater within the State than the State itself, for it may, though forbidden, exercise dominion over the territory and business of the State.

An assumption of such power would be usurpation by the corporation, or invasion by the State of Illinois.

Such a proposition seems too preprosterous to be seriously entertained, were it not a fact that Iowa now con-

fronts it. A claim of right so to do makes more clearly apparent the danger to the State and people from corporations, dwelt upon by the courts in—

Thorpe vs. R. R. Co, 27 Vermont, 140.

Charles River Bridge Co. vs. Warren Bridge Co, 11 Peters, 544.

If the power of such corporations to migrate to other States is not a constitutional one, then their continuance there is not (unless based upon contract), for the right to remain would be but a correlary of the right to go.

If the Federal constitution gives them no right to go, because engaged in inter-State commerce, then it gives them no right to remain. That power of the United States is not dependent on the action of the States.

This is fully discussed and settled in *Doyle vs. Continental Ins. Co.*, 94 U. S., *supra*.

The authority of Congress under the federal constitution is to regulate inter-State commerce, not to regulate corporations as corporations.

Very recently the federal government has by law assumed the regulation of inter-State commerce. That law supercedes very little of the great mass of State legislation relating to railroads. So far as it covers the same ground it does supercede it. That assumes to cover the whole field of regulation of inter-State commerce by railroads. It does not assume to determine, nor cover any point involved in this law, and in the first section it expressly exempts from its operation all domestic commerce.

What it does, is to enact:

SEC. 1. * * That all charges shall be reasonable.

SEC. 2. Prohibits special rates, rebates, drawbacks and unjust discrimination.

SEC. 3. Prohibits undue or unreasonable preferences, and requires, "according to their respective powers," inter change of traffic.

SEC. 4. Regulate long and short hauls.

SEC. 5. Prohibits pooling.

SEC. 6. Requires posting of schedules of rates of fares and charges, etc., with penalties for violation.

SEC. 7. Prohibits combinations to prevent carriage from being continuous, etc.

The remainder of the law relates to penalties; the creation of a commission, etc.

This law of Iowa touches no point covered by that. It lays no tax; regulates no charges; relates to no pools, short or long hauls; creates no supervision nor regulation in any form. It only relates to the corporation itself, and involves only a question of power of the State not involved in inter-State commerce.

If this law attempted to exclude foreign, or inter-State commerce from the State, or to prevent such commerce through the State, then it would be invalid. It leaves commerce as free as ever, and in a most liberal spirit allows corporations of other States to engage and continue in it here, upon precisely the same terms that its own citizens and corporations may and do.

The plea that the attempt to do what this law does, is based solely upon the right to exclude foreign corporations from the State, and is consequently not in the nature of other laws for the protection of the people by police powers, or the general reserved powers of the State, and that injustice is done, cannot be sustained.

The violation of any law depending on penalties for enforcement involves the deprivation of the violator of every right. This extends to the taking of property, liberty, and even life. Surely the citizen has as sacredly vested rights in these as has a corporation in its franchise. As declared in cases hereinbefore cited, this is a method of enforcing the law.

States enact that railroads shall fence their lines, block their frogs and switches, plank their crossings, put in cattle-guards, run slowly through cities, whistle before reaching crossings, stop at railroad crossings, and numerous other things. Failure to obey these laws subject the

agents to arrest, and the companies to penalties which would bankrupt the corporations and take from them their property. "Right to do business" in violation of any one of these regulations they have not; and in any such regulation the only way that they escape being driven from the State, if a foreign corporation, or from the business, if a domestic or foreign either, is to obey the law.

And yet none of these things are regulations of commerce.

These questions have been very fully considered and our position is maintained in

17 Wallace, 565, citing:

Wilson vs. The Blackbird Creek, etc., 2 Peters.

Gilman vs. The City of Philadelphia, 3 Wallace, 728.

Cooley vs. Board of Wardens, 12 How., 319.

Munn vs. Illinois, 94 U. S., 113.

Baltimore & Ohio Railroad vs. Maryland, 21 Wallace, 456.

In most of the cases heretofore before you involving similar statutes, corporations engaged in inter-State commerce were not parties, and that question was in those cases left undetermined, as in

Paul vs. Virginia, 8 Wallace, 168.

Doyle vs. Continental Insurance Company, 94 U. S., 540.

But the precise principles so far as that question is concerned applied to citizens or corporations of the State itself, was determined in the case of

Munn vs. Illinois, 94 U. S., 113.

It is contended by plaintiff in error that in many adjudicated cases referred to this court has reserved a determination of questions concerning rights of corporations engaged in inter-State commerce. In the case of *Pensacola Tel. Co. vs. W. U. Tel. Co.*, 96 U. S., 1, it was held with dissenting opinions that where the State created by law a monopoly of the telegraphing business, which included necessary

means of communication with the United States forts, etc., that the law would not be sustained at the suit of an individual; that if the State desired the foreign corporation ousted the State must ask it.

In this case the State is seeking to enforce the law.

A case more nearly parallel with this, than any other to which we are able to refer and which involved the rights of the State of Iowa to control this very corporation, is

Fuller vs. C. & N. W. Railroad, 17 Wallace, 566.

This action arose under chapter 169 of the acts of the Ninth General Assembly of Iowa, which required all railroad companies doing business in Iowa to

1st. Adopt by the board of directors at specified times schedules of tariffs.

This law requires the adoption of a resolution authorizing application for a license, and stipulating that service may be made on others than those named in the former law.

2d. That required the posting in station houses of the company tables containing tariffs for transportation.

This requires the filing with the Secretary of State the articles of incorporation and application for license.

3d. That provided penalties for failure to comply with the law.

This does the same.

That law was sustained by this court, though the authority of the State was denied by the corporation on the ground that it was an attempt to regulate commerce between the States in which the corporation was engaged. On page 208 of the opinion this court declared:

"This in no manner interferes with commerce or transportation, but leaves it as untrammelled as before. The regulation being to the extent of preventing abuses, injustice and oppression toward the people. * *

"It is intended simply for the protection of the people of the State, and in its practical operation has no other effect, and in this view is a police regulation indisputably within the authority of the State government."

Had the company not complied with that law the effect would have been through the penalty to deprive them of their property and to compel them to quit doing business in this State.

In *Railroad vs. Maryland*, 21 Wall., 456, it was declared that a State has all plenary power over its own territory, highways, franchises and corporations, and this, though the exercise of this power may incidentally affect transportation. This is also held in

Rector vs. Phila., 24 How., 300.

People vs. Roper, 55 N. Y., 629.

People vs. Commissioners, 47 N. Y., 50.

Humphrey vs. Pegues, 16 Wall., 244.

Tomlinson vs. Jessup, 15 Wall., 454.

Munn vs. Illinois, 94 U. S., 113.

In the last case cited above, the court say: "It is not everything that affects commerce that amounts to a regulation of it within the meaning of the Constitution," and holds that a regulation of the warehouse of plaintiff in error, while used by those engaged in inter-State commerce, was not necessarily a regulation of commerce itself, although connected with it: that that was a matter of domestic concern.

If the position of this corporation be well taken, that Iowa cannot regulate or exclude it because its regulation or exclusion is a regulation or exclusion of inter-State commerce; then it is equally true that the law of Illinois authorizing it to enter Iowa confers no powers, and is likewise void: for it the law of Illinois—would be affirmative action for the control or regulation of inter-State commerce in Iowa. If the control of railroad coporations is a

regulation of commerce, then Illinois legislation concerning its railroad corporations in Iowa, is a regulation of commerce in the State of Iowa.

Upon this basis, the National Government only could authorize this company to enter Iowa to carry on business, and its every act outside of Illinois would be *ultra vires.*

I believe that this proposition involves greater hazard to foreign railroad corporations than the State of Iowa desires to impose. It is a two-edged sword which in severing the right of the State to control, severs all rights of this and other foreign railroad corporations in Iowa.

CONSTRUCTION OF STATUTE.

The court will not declare a law unconstitutional unless the opposition between the law and constitution be clear and plain.

Fletcher vs. Peck, 6 Cranch, 87.

"The incompatibility must not be speculative argument or be founded on hypothetical cases or supposed consequences; it must be clear, decided and inevitable; such as presents the contradiction at once to the mind without straining either by fancied reasonings or to remote consequences."

Dartmouth College Case, 4 Wheat., 628; citing:

Fletcher vs. Peck, 6 Cranch, 87.

"Whether a statute is constitutional or not is always a question of power. * * *" In any case in which the power exists the courts are not at liberty to inquire into the proper exercise of the power. "They must suppose that legislative discretion has been properly exercised."

"If evidence was required, it must be supposed that it was before the legislature when the act was passed, and if any special finding was required to warrant the passage of the particular act, it would seem that the passage of the act itself might be held equivalent to such finding."

Cooley's Const. Limitations, 5th Ed., 225.

Cooley's Const. Limitations, 220, 221 and 222.

"It is well settled by the decisions of this court," says Taney, Chief Justice, in *Charles River Bridge Co. vs. Warren Bridge Co., supra*, "that a law may be retroactive in its character, and may divest vested rights, and yet not violate the constitution of the United States; unless it impairs the obligation of a contract." * * *

There is certainly no part of the constitution of the United States which applies to a law of that description, nor are we aware of a decision of this or any circuit court which has condemned such law upon such ground, provided its effect be not to impair the obligation of a contract."

Charles River Bridge Co. vs. Warren Bridge Co., supra.

"Unless the Constitution has expressly granted exclusive power to Congress it does not preclude the right of the States to exercise the same power.

"The cases where these concurrent rights arei ncompatible are.

"*First.* In places where legislation is delegated to Congress over places purchased by consent of Legislatures of the States in which the same shall be, as for forts, arsenels, dock-yards, &c.

"Of the second class:

"The prohibition of the States to coin money or emit bills of credit.

"Of the third class:

"The power to establish an uniform naturalization law, and delegation of admiralty and maratine jurisdiction. In all other cases the State retains concurrent authority with Congress."

Houston v. Moore, 5 Wheat, 49.

To these cases of non-concurrent authority must now be added the exclusive right of Congress to regulate foreign and inter-State commerce; but not over State commerce,

nor that with which this law of Iowa alone relates, corporations engaged in commerce nor over the territory and franchises of the States.

An enlargement of the limits within which State authority is excluded, to the extent asked by the plaintiff in error, would add nothing to federal power over commerce, but would deprive the States of power to legislate for their security and welfare; and while requiring protection for these corporations by the people, would place them beyond the police power of the State in which they dwell.

Neither the necessity nor equity of this law is in any form denied in this action, but under plea of vested rights a construction of statutes is asked, which to me seems at variance with the history of the State and its railroad legislation from the first to the last act of the General Assembly.

If necessity for the law exists as the legislature has found that it does, then "to the objection that such laws violate vested rights of property, it has been forcibly answered, that there can be no vested right to do a wrong. Claims contrary to justice and equity cannot be regarded as of that character. Consent to remedy the wrong, is to be presumed."

Railroad v. Kreiger, 23 Wall., 149

Any obligation imposed upon this corporation under the inter-State commerce law, or by act of Congress granting land to the Cedar Rapids & Missouri River Railroad Company, relating to carrying of soldiers, mails, etc., are not involved here.

As this court declared, in *Peik vs. C. & N. W. Railroad*, 94 U. S., *supra*: "If the question ever arises whether the company can be compelled to continue its business at the prices fixed, it will be time enough for us to pass upon it when it reaches here in the due course of proceedings. It is not here now."

With reference to carrying mails, etc., as provided for in the same land grant act, this court declared that the United States was making no complaint. That until it did the question would not be determined.

Peik vs. C. & N. W. Railroad, supra.

This law has received the approval of the legislative, executive and the judicial departments of the government of Iowa.

It relates only to powers of the State in local self-government: to its dominion over its territory, and the persons and things within its borders.

This being true, then the relief prayed by the plaintiff in error should be denied.

J. H. SWENEY.

With the Attorney-General of Iowa, Attorney for defendant in error and for the State of Iowa.

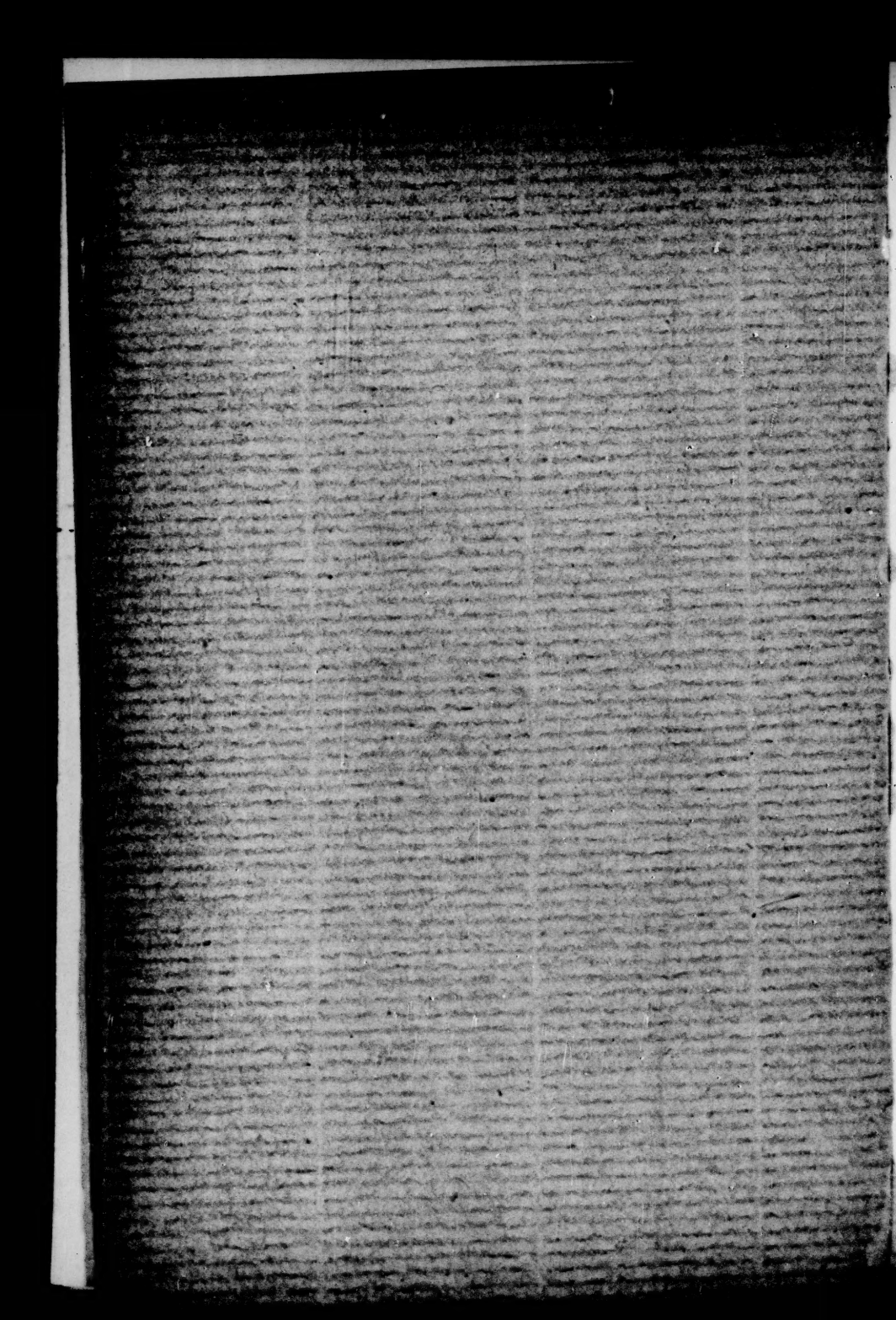
121-186

IN THE SUPREME COURT OF THE UNITED STATES.

HENRY S. BARRON,
Plaintiff in Error,
vs.
GEO. W. BURNSIDE, Sheriff,
Defendant in Error.

W. C. GOUDY, *Attorney for Plaintiff in Error.*
A. J. BAKER, Attorney General of Iowa, and J. H. SWEENEY, *Attorney for Defendant in Error.*

Answer to points made by Plaintiff in Error, in printed argument.



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W. C. GOUDY, *Attorney for Plaintiff in Error.*

A. J. BAKER, Attorney General of Iowa, and J. H. SWEENEY, *Attorney for Defendant in Error.*

Answer to points made by Plaintiff in Error, in printed argument.

I

The counsel say, at page 30 of argument "The C. & N. W. Railway became the assignee of the several Iowa corporations and undertook to discharge the obligations of the Iowa corporations."

They then stand in no higher relation to the law than the Iowa corporations stood, and if the Iowa corporations could be subjected to such change in the laws existing at the time of the incorporation, then the grantee Corporation could be subjected to like burdens.

The learned counsel cite Rodermacher vs. Railroad Co., 41 Iowa 297, in support of the claim that additional burdens could not be imposed, and say that it was decr

ded in that case that "any act of the legislature which deprives the railway company of the rights to operate its road, would impair the obligation of a contract."

It is a mistake to say, the Court in the case cited so "decided."

Judge Day uses substantially the language quoted above in delivering the opinion of the Court in that case, but it is used *in arguendo* only; the point was not involved in the case, and the language was used simply as an illustration. The court do decide however that there is no implied contract between the State and a corporation, that there shall be no change in the laws existing at the time of the incorporation, which shall render the use of the franchise *more burdensome or less lucrative*, any more than there is between the State and an individual, that the laws existing at the time of the acquisition of property, shall remain in force; and the court cites Thorpe vs. Railroad, 27 Vt. 140 in support of this doctrine; and then go on to give illustrations, citing numerous other cases, as

Ohio & Miss. R. R. vs. McClelland, 25 Ill., 140.
Gorman vs. Pac. R. R., 26 Mo., 441.

In this last case the Supreme Court of Missouri hold the same conclusion, under a charter which contained no reserve power to the legislature.

The court in Rodemacher vs. Railroad Co., might have further illustrated by supposing a case where a loan was made and a mortgage given at a time when the mortgagee would have the right to foreclosure in a particular court, and thereafter the law be so amended as to require the foreclosure to be had in another court, more expensive and not so easy of access, andstill there would be noimpairment of contract.

In support of this same proposition the learned counsel cites

Memphis Railroad Co. vs. Commissioners, 112 U. S. 609

The doctrine that we contend for, is clearly expressed in that case, viz: That no more passes to the purchasing corporation, than belonged to the grantor; and sometimes, not so much. Special privileges held by the grantor corporation, the court say, do not pass to the grantee, citing

Morgan vs. Louisiana, 93 U. S. 217.

Wilson vs. Gaines, 103 U. S. 417.

Louisville & C. R. R. vs. Palmes, 109 U. S. 244

And the same points are decided in the other case cited by counsel, viz:

Chesapeake & Ohio Railway vs. Miller, 114 U. S., 176.

In all these cases the court holds, that the exemption from taxation, which as to the original corporation, was a contract, and protected as such, is not by the act of sale transferred to the purchasing company, and this, too, when by the law under which the sale and transfer was made, it was provided "That upon such conveyance to the purchaser the said company shall *ipso facto* be dissolved, and said purchaser shall forthwith be a corporation, and *succeed to all such franchises, rights and privileges.*

The cases cited by the learned counsel establish the law, as we contend, to wit; that the purchasing company can acquire *no greater* privilege than belonged to the original corporation, and in many instances do not succeed to all the franchises and privileges of the grantor corporation.

The burden of the argument is, that the law in question deprives the present corporations of the right to use and operate their railroad. We have endeavored to show in our former argument, that such is not the provisions of the law. The right to exercise the "*privileges conferred upon corporations*" is subjected to a compliance with the law.—(See Sec. 2, chapter 76, Laws of 21st G. A. of Iowa)

The right to transact business is not denied to the corporation, even if the permit is not taken out.

It may still transact its business, but by so doing while in default of compliance with the law, the corporation becomes subject to a penalty of $100.00 per day, and the employes and agents become subject to fine and imprisonment. The alternative is given, to comply with the law, or be subject to the penalty. If there is no unconstitutional requirement in the law, then there can be no breach of the constitution in inflicting the penalty. We contend that the requirements are such as this Court have held could be imposed.

The question of security to the bond holders, suggested on page 31 of counsel's argument, was raised and disposed of by this Court in

C. B. & Q. Railway Co. vs. Iowa, 94 U. S., 155.

II.

The plaintiff in error endeavors to escape the force of our argument, viz: that Section 1300 of the Code does not authorize the sale or lease of Iowa railroads, to foreign corporations, by citing

Treadway vs. C. & N. W. Railway, 21 Iowa, 351.

Your Honors will see that no such question was before the Court in that case. As stated by the learned Justice delivering the opinion, *the record* admitted that the defendant was a corporation of Illinois, operating a railroad in Iowa *as lessee*. The Court in deciding this case did not go out of the record to search for facts, and no question as to the effect of this statute was before the Court in that case, nor in any of the numerous cases cited by plaintiff in error.

We contend, therefore, that the State is not now estopped, and that the question is now for the first time properly before the Court, for there will be no ratifica-

tion implied from indirect recognition by the State, whether judicial or legislative.

Thomas vs. Railroad Co., 101 U. S. Stat., at p 85.

The question of the purpose and extent of Section 1300 of the Iowa Code in respect to the sale and transfer of corporate franchises and property, is now before this Court, as an original question.

III

The counsel cite Sect 5,258 Revised Statutes of the United States, as being a law of Congress regulating commerce, and reason therefrom, that any law of a State affecting commerce between the States, is invalid.

Any law of a State that conflicted with the provisions of Section 5258 would undoubtedly be unconstitutional Our contention is, that the law in question does not so conflict. Its direct operation is not in the least degree a restriction or burden upon the free commercial intercourse with other States. The restrictions, if any, come from the refusal to comply with the law. Courts do not look to these remote contingencies, but to the direct, and immediate effect of the law.

This section 5258 was in force when *Fuller vs. R. R.*, 17 Wal. 566, *C. B. and Q. R. R. vs. Iowa Supra.*, and *Munn vs. Illinois Supra.*, were decided by this Court; and it was not then thought that the remote possibilities of the result of legislation would be held to conflict with the Constitution or with section 5258.

The case of *R. R. Co. vs. Richmond*, 19 Wal., 589, does not so hold; nor does it decide any proposition involved in this controversey.

We wish here to say that we do not for a moment contend, that the States can by any legislative enactment regulate commerce between the States. Our contention is, that the law in question has no such effect. The

energies of the counsel for the plaintiff in error are expended in proving a legal proposition which we admit without question, and have not even remotely attempted to controvert.

We have shown, however, very conclusively, we think, that the law in question does not at all interfere with or regulate commerce. As before indicated, there is no provision of the law which forbids the corporation from transacting commercial business in the State, as other people do or may do. The mere transportation of goods and passengers is not *per se* an exercise of *corporate* powers, as has been repeatedly said by this Court, that can be done as well by natural persons as by corporations. The legislature has not attempted to interfere with these commercial transactions. It says to these corporations in effect: these railroads are the works of the State, created by it, constructed under its authority and the operation then *within the State*, must be by such corporations as the State may designate, and upon such conditions as the State may see fit to impose, and over such corporations the State shall have supervision and control.

IV.

On page 37 of counsel's argument he says, the Chicago and Northwestern Railway is a post road; and that the train on which Barron was employed was carrying the U. S. mail, and for this reason he asks this Court to declare the law invalid. The same question was raised by this same railway company in *Peik vs. C. & N. W. Railway Co.*, 94 *U. S.* But the Court there very properly remarked, that the railway company could not be heard to raise that question. The United States alone is interested in the matter of the transportation

of mails, and, until it complains, the question cannot be raised by collateral proceedings.

V.

On page 47 of argument counsel say, under the laws of Iowa the C. & N. W. Railway Co. acquired property rights in the State, and that the effect of the law is to impair the value of this property; counsel say "to take away its entire value." This, however, cannot be true. It may have the effect to impair its value, but this will not render the law vulnerable to the objections made by counsel. The State is not a guarantor that it will keep the value of corporate property, or any other kinds of property, from deteriorating. Values fluctuate from a great many causes. All investors must take their chances. As to this, railroad corporations do not seem to regard this question of values as at all binding upon them, either in conscience or in law. They are in the habit of so discriminating against our locality and in favor of another, as to destroy values in the one and enhance them in the other. They pass by a town that is a thriving trade center, and build up a rival in near proximity that completely destroys values in the old town. There are a thousand circumstances, both of trade and legislations that affect values. It is no reason at all for holding a law invalid.

This same claim was made by the Continental Insurance Company in the *Doyle* case, but this Court did not consider it a valid objection to the law of Wisconsin. The gentleman may say that the Continental Insurance Company did not have so great an amount of property to be affected as does the C. & N. W. Railroad Co. That may be true, but that fact does not alter the principle. The question is not one of amounts. The small holding is entitled to the same

protection as the larger one. The law does not discriminate in favor of the millionaire as against the humblest of its subjects. The cottage of the artizan is as much under the protection of the law, as the palace of the railway king. The property of the insurance company was entitled to as much protection, as is the larger values of the Railroad Co. The point was directly and distinctly raised in that case, that the Company had established its business in Wisconsin when it was lawful for it to do so, and had expended large sums of money in building up its business, and in property therewith connected, which would be rendered of no value if the law of Wisconsin was sustained, &c. This Court did not then think this objection to the law was well taken. We can see no reason why the rule should now be changed. We fail to see, however, in what way a compliance with this law will impair the value of the railroad property.

VI.

On page 48 of argument counsel say "there is a difference between the Wisconsin and Iowa Statutes. The one collided with no provision of the Constitution, the other did not."

This is said by counsel, under the 4th head of his argument, viz: *that the act of* 1886 *is repugnant to Sec. 2, Article 3, of the Constitution, and is void.* We are unable to see how it is that the Iowa law is violative of that Section of the U. S. Constitution, when the Wisconsin law is not. The Wisconsin law is direct and specific in its declaration that if any insurance company shall make *application* to remove any suit from the State to the Federal Court, it shall be the *imperative duty of the* Secretary of State to revoke the permit of such company to transact business in the State. This as fully denies

the foreign insurance company the right to remove causes from the State to the Federal Courts, as does Sec. 4 of the act of 1886, in Iowa. In fact it is more sweeping in its terms, for it applies to all classes of causes or suits, and to all reasons for removal, whereas the Iowa law is limited in both these respects. There cannot possibly be any matter of difference between insurance companies and railway companies, respecting their rights under this Section of the Constitution. The jurisdiction of the United States Courts extends to all citizens irrespective of their character or classification. If a railroad corporation of Illinois is entitled to invoke the jurisdiction of the United States Court in a suit with a citizen of Iowa, then an insurance corporation of that State is entitled to the same right. Neither the question of contracts or commerce is involved in the provisions of Section 2 or Article 3. The learned counsel, however, in considering the question in the light of this last mentioned Constitutional provision, drifts off and into both the questions of impairment of contracts and inter-State commerce. We do not feel inclined to go back to these questions which the learned counsel has fully treated of under appropriate heads, and which we have endeavored to meet, both by anticipation in our first argument and by answer in the present one.

The counsel, however, on page 50 supposes the following case. "It would not be within the power of the State Legislature to prohibit any common carrier, no matter what his means of conveyance was, from bringing woolen clothes or cotton goods of any description into the State, for barter or sale." We think we have fully answered this by conceding the proposition, and drawing the distinction between the facts of the supposed case, and the facts in the case at bar. The right to bring

such goods into the State, and to barter and sell them does not carry with it the right to exercise corporate control over the highways upon which such goods are carried. The two propositions are to our mind so distinctly different, that we are at a loss to account for the illustration being made by the learned counsel.

In support of the illustration, and of the argument counsel cite *the Lafayette Insurance Co. vs French*, 18. How., 404. We are still at greater loss to account for this citation. The Court decided in that case as follows:

FIRST.—"This Court does not hold that either a voluntary association of persons or an association into a body politic, created by law, is a citizen of a State within the meaning of the Constitution."

SECOND.—That "this Corporation" (the Lafayette Insurance Co.), "existing only by virtue of the law of Indiana, could not be deemed to pass personally beyond the limits of that State." These two propositions gives support to our argument that "while the foreign State cannot exclude the Corporation to the extent of destroying the effect of its contracts, entered into in conformity with its chartered powers, it can exclude it from becoming a resident of the State, *for it has none of the rights of citizenship conferred by the Constitution of the United States.* It can contract in the exercise of commercial transactions, by relation from the place of its domicile, for as in the case of natural persons it is not necessary that it should actually exist in the sovereignity in which the contract is made." See page 54, Argument of A. J. Baker, Atty. Genl.

The Court further decides in this case,

THIRD.—"A Corporation created in Indiana can transact business in Ohio only by the consent, express or implied, of the latter State," affirming the doctrine of *Augusta vs. Earle*, 13 *Pet.*, 519.

And further the Court holds

FOURTH.—"This consent may be *accompanied by such conditions as Ohio may think fit to impose;* and these conditions must be deemed valid and effectual by other States, and by this Court, provided they are not repugnant to the Constitution or laws of the United States, &c."

We have so frequently referred to the fact that the conditions imposed in the Iowa law, are the same as those imposed in the Wisconsin law, which were held to be valid by this Court, in *Doyle vs. Insurance Company*, that it is not necessary here to repeat it.

VII.

On page 53 of Argument counsel say:—

The parts of the Statute are so connected and dependent that they cannot be separated so as to hold one part valid and the other part invalid. The true inquiry is as to the intent of the legislature, and that being ascertained, the question as to the validity of the act will be decided."

Suppose we admit this, and then what result will be reached by a correct rule of reasoning, in the light of the decisions of this Court. The counsel preceeds what is quoted above, by saying that the intention of the Legislature was to prevent the removal of causes from State to the Federal Courts. This will not render the law invalid. It will not be effectual to prevent the removal, however, but the State may say to the Corporations that they "must abstain from removing causes to the Federal Courts or cease to do business in the State." So if the *intent*, is to govern the question of the validity of the law, and the *intent* is, as stated by counsel, then it is already determined that the law is a valid exercise of State powers.

Again if the intent is to govern, we feel assured that

this Court will not declare that in the enactment of the law, it was the intention of the Legislature to interefere with or to regulate inter-State commerce.

The intent clearly was to do what this Court in a long line of cases has said the States have the sole and absolute power to do, viz: to determine on what conditions foreign corporations may come into the State, and exercise corporate powers, and acquire corporate rights therein. To hold adversly to the State in this case, the Court must overrule what it has decided in *Earle vs. Augusta*, *Paul vs. Virginia*, *Doyle vs. Insurance Company*, *Fire Association, of Philadelphia, vs. New York*, *Lafayette Insurance Company vs. French*, *and several other cases*.

If, then, the State has authority to enact the law for the purposes, and with the intent that it did enact it, it will be held valid as a whole, even though in some of its remote results it may interfere with commerce. There can be no question as to the powers of the State to fix the terms on which these corporations may be admitted into the State, for the transactions of State commerce. And if, in transactions of State commerce, the railroad company so mixes its trains as to carry on the same train, and by the same employes, both State and inter-State commerce, as it is agreed in the record it was doing in this case, then we insist that neither this Court, nor Congress, nor any other power, has authority to declare the entire law invalid. If the gentlemen say they cannot be controlled in the business of carrying commerce between the States, it then becomes *their* duty to so separate their business as to distinguish between the two. It will not do for them to say that it would be inconvenient for them to separate their State from their inter-State business; that it would be more expensive in its operation, and less remunerative to the

Corporation to do so. This Court has no jurisdiction to determine that the State must legislate for the convenience and profit of foreign corporations. They must conform to the conditions imposed, or cease to transact local or State commerce. There is no escaping this conclusion without overturning the long established line of authorities heretofore referred to. This Court will not hold a law of the States invalid if there are any grounds on which it can be sustained. Every presumption is in favor of the validity of the law. This rule is too well settled to require citations.

If the law is valid as applied to the control of the Corporation in the matter of carrying passengers from point to point within the State, then the judgment of the State Court must be affirmed, for it is conceded that the train on which Barron was engineer, was carrying passengers from point to point in the State of Iowa (see page , printed record); and that Barron's run on said train, was between points wholly within the State, to wit: from Clinton to Boone, in Iowa (see page , of printed record). It became the duty of the Corporation, after the passage of said law, either to conform to its provisions or cease to carry freight or passengers between Iowa points. Or if they intended to test the law in regard to the right of the State to fix the conditions on which they might continue to transact such State business, then they should have so separated their through from their local business, as to distinguish the one from the other. They cannot, by a refusal so to do, be heard to complain that the law is inseparable. The business is easily separated, and then the operation of the law is separable.

VIII.

Counsel for petitioner, on page 56 of his argument,

admits practically that Section 1090 of the Code enacted in 1873 is broad enough to bring railroad companies within the provisions of the law of 1886, except for the interference with the restriction and laws of the United States. He says that the object of Section 1090 was to enable the legislature to amend the charter or perhaps repeal it.

The law of 1886 certainly does no more than that. It simply suspends for non compliance with its corporate rights.

The effect of the adoption of this Section 1090 would be precisely the same as the adoption of the amendment to the Constitution of the Article referred to in *Memphis Railroad Company vs. Commissioners*, 112 U. S. 617, referred to by counsel for plaintiff in error in this connection; they are identical in substance and "a State can no more impair the obligation of a contract by adopting a constitution than by passing a law."

Jocoway vs. Denton, 25 *Ark.* 625.

White vs. Hart, 13 *Wall.* 649.

It is immaterial that a transfer of corporate rights is by sale or other transfer, *inter partes*, or under foreclosure of a mortgage authorized by law. "The legal effect is nothing more or less and nothing other, than a surrender or abandonment of the old charter by the corporation and a grant *de novo* of a similar charter to the so-called transferees or purchasers. • • "It is of course the law in force at the time the transaction is consummated and made effectual, that must be looked to as determining its validity and effect."

Memphis Railroad Co. vs. Commissioners Supra.

This so-called sale to the Chicago and N. W. Railroad was made in 1884, eleven years after the enactment of Section 1090 of the Code, Section 1300, under which it claims right to buy, also expressly declares that the

transferee shall hold "subject to the laws of the State." Not only was Section 1090 in force in 1884, when the instrument of conveyance was executed, and subject to the provisions of which, we maintain, that this Company took whatever right it acquired; but, as shown on pages 22 and 23 of record (printed copy), it was in force when three of the local corporations were building part of this Company's lines in Iowa, were incorporated or their articles amended. Neither is this all.

Page 22 of record (printed copy) shows that this Company subjected itself to the act of the Thirteenth General Assembly retaining control over railroad companies receiving aid from enforced taxation.

All of these railroads are operated by the Chicago and Northwestern as one indivisible line and system of railway in Iowa. If the exercise of this reserved power by the State, in any case, is valid, then this company took, subject to that right. The Chicago and Northwestern Railroad Corporation is a legal entity. It is a unit. It has no different rights in the different towns and counties of the State through which its lines run. No corporate rights can be acquired under the constitution except *general* rights.

The claim of different and special privileges and immunities, on different parts of its line, and in separate Counties in Iowa, as claimed by the learned counsel in the closing paragraph of his argument, is provided against in the Constitution of the State.

"The operation of all laws shall be uniform." If this Company is doing business under a law of Iowa, that law has the same effect in each county of the State, and over each mile of this company's Railroad therein.

IX.

It is claimed by counsel that the recent act of Con-

gress upon the subject of inter-State Commerce, as applied to railroads, renders this law of Iowa void. In the argument of Mr. Sweney, page 412, we think we have fully shown that such is not the case. Congress cannot deprive the State of the sovereign rights inherent in them as States to control this branch of domestic police, any more than it can deprive it of any other sovereign right. There are a great number of regulations which the State has the right to impose, and none of them can be made effective except the State can impose penalties for their violation. The State cannot imprison the Corporation, so it must reach the end through some other remedial agency. As it cannot deprive the Corporation of personal liberty, it has to resort to penalties or to a refusal to permit the Corporation to transact corporate business until there is a compliance with the law.

And in conclusion we say:

There is in the State of Iowa several thousand miles of railroad carrying on domestic and inter-State commerce.

Many thousands of men in the State are employed by these railroad corporations.

The vast property interests of these companies depend upon the citizens and laws of Iowa for protection, and for the government of these employes.

Each mile of track, by the authority of the State, runs over the farm, or lot of some citizen of the State.

At an average of six or seven miles of track, is a station, where daily and hourly transactions, entirely distinct from inter-State commerce, are carried on between these companies and the citizens of the State. They enter into and are a part of the every day affairs of the people, and are as purely domestic as the business done between the natural citizens themselves.

That these affairs are not matters pertaining to local self-government, is a claim inconsistent with the spirit of both the English and American Constitution and laws.

The power of the Federal Government exists to regulate the manner in which these corporations shall do certain of their business. The extent to which this interferes with the power of the State to regulate its domestic concerns, as the security of the people requires, has not yet been fully defined.

By declaring this law of 1886 invalid, this Court may paralyze the power of the State to protect its people. The power to protect them in these relations is not vested in the Federal Government, and the corporations would then be without control.

The power of protection is vested in the State and not in the United States.

The claim made in this and every similar case, by such corporations, is that that power has become extinct.

If that be true, then it has been surrendered to the corporations that they may work their will unchecked by a superior power.

The State of Iowa has not, and could not if it would surrender its rights to control over its citizens, its business and its territory.

A. J. BAKER,
Attorney General of Iowa.
J. H. SWEENEY,
For Defendant in Error.

JOINDER IN ERROR.

The defendant in error, joins issue with plaintiff and denies that the Supreme Court of Iowa erred in any of the matters assigned as error by said plaintiff in error.